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ALAGAPPA UNIVERSITY

KARAIKUDI - 630 003, TAMILNADU

DIRECTORATE OF DISTANCE EDUCATION

M.B.A. (HOSPITAL MANAGEMENT)



Paper - 4.2

HOSPITAL RELATED LAWS

Paper 4.2 : HOSPITAL RELATED LAWS

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REFERENCE BOOKS:

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2. Bare Acts.

Course Material prepared by –

Mr. S. Sethu
Senior Training Officer
Allied Medical Science Centre
Karaikudi

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Unit – 1

CENTRAL BIRTHS AND DEATHS REGISTRATION ACT, 1969

The Central Births and Deaths Registration Act was promulgated by the Government of India in 1969. The Act came into force on 1st April 1970. The objective of the Act is to improve the Civil Registration System.

The Act provides for ***compulsory registration of births and deaths*** throughout the Country and compilation of vital statistics in the states so as to ensure uniformity and comparability of data. The implementation of the Act required adoption of rules for which also, model guidelines have been provided. The Act also fixes the responsibility for reporting births and deaths. While the public (e.g. parents, relatives, heads of hospitals, nursing homes, hotels, jails or dharmashalas) are to report events occurring in such institutions to the Registrar concerned. The time limit for registering the event of births is 14 days and that of deaths is 7 days. The Act makes the beginning of the new era in the history of vital statistics registration in India.

When certifying death, if the medical officer has had that person under his treatment, and has seen him not earlier than 1 week before death and is certain at the time of death that was natural, and he had died from the disease he was treating, he may issue a death certificate, provided he has seen the deceased during his terminal stages or after death, and has excluded foul play. If in doubt, however, the death certificate should not be issued.

For certifying the cause of death, the WHO guidelines should be followed. "International classification of diseases and cause of death", published by WHO should be addressed to for various causes of death. Thus the cause of death should be described as follows:

i) (a) Immediate cause of death, and
   (b) Resulting from (previous morbid conditions resulting the above death) and leading to it.

ii) Other non-related significant diseases which directly did not result in but had a role to play in the morbidity/ mortality.

The present average level for registration of births in the country is about 50 per cent and of deaths about 45 per cent. According to the Office of the

Registrar-General of India, the purpose of this intensive publicity drive is to achieve a goal of 100 per cent registration. Many developing countries in the world have already achieved full levels of registration of births and deaths through sustained campaigns.

In India too, a massive publicity campaign is being launched by the Office of the Registrar-General of India to educate people about the necessity of timely registration of births and deaths. The massive publicity campaigns are being done through radio, television, documentary films, cinema slides to carry the message of the need to register every birth or death.

MEDICAL TERMINATION OF PREGNANCY ACT, 1971

The Medical Termination of Pregnancy (MTP) Act, 1971 lays down:

1. The conditions under which a pregnancy can be terminated.
2. The person or persons who can perform such terminations, and
3. The place where such terminations can be performed.

The conditions under which a pregnancy can be terminated under MTP Act 1971.

There are 5 conditions that have been identified in the Act:

1) **Medical:** Where continuation of the pregnancy might endanger the mother's life or cause grave injury to her physical or mental health.
2) **Eugenic:** Where there is substantial risk of the child being born with serious handicaps due to physical or mental abnormalities.
3) **Humanitarian:** Where pregnancy is the result of rape.
4) **Socio-economic:** Where actual or reasonably foreseeable environments (whether social or economic) could lead to risk of injury to the health of the mother.
5) **Failure of contraceptive devices:** The anguish caused by an unwanted pregnancy resulting from a failure of any contraceptive device or method can be presumed to constitute a grave mental injury to the health of the mother. This condition is a unique feature of the Indian Law and

virtually allows abortion on request, in view of the difficulty of proving that a pregnancy was not caused by failure of contraception.

The written consent of the guardian is necessary before performing abortion in women under 18 years of age, and in lunatics even if they are older than 18 years.

The Person(s) who can Perform Abortion

The Act provides Medical Practitioner having experience in gynecology and obstetrics to perform abortion where the length of pregnancy does not exceed 12 weeks. However, where the pregnancy exceeds 12 weeks and is not more than 20 weeks the opinion of two Registered Medical Practitioners is necessary to terminate the pregnancy.

Where abortion can be done: The Act stipulates that no termination of pregnancy shall be made at any place other than a hospital established or maintained by Government or a place approved for the purpose of this Act by Government.

Abortion services are provided in hospitals in strict confidence. The name of the abortion seeker is kept confidential, since abortion has been treated as a statutory personal matter.

MTP Rules (1975): Rules and Regulations framed initially were altered in October 1975 to eliminate time-consuming procedures involved in MTP and to make services more readily available. These changes have occurred in 3 administrative areas.

Approval by Board

Under the new rules, the Chief Medical Officer of the district is empowered to certify that a doctor has the necessary training in gynecology and obstetrics to do abortions. The procedure of doctors applying to Certificatin Boards was removed.

Qualification to Perform Abortion

The new rules allow for registered medical practitioners to qualify through on the spot training:

"If he has assisted a RMP in the performance of 25 cases of medical termination of pregnancy in an approved institution".

The doctor may also qualify to do MTP's under the new rules if he has one or more of the following qualifications which are similar to the old rules:

(a) 6 months housemanship in obstetrics and gynecology (OBG).

(b) a post-graduate qualification in OBG

(c) 3 years of practice in OBG for those doctors registered before the 1971 MTP Act was passed.

(d) 1 year of practice in OBG for those doctors registered on or after the date of commencement of the Act.

The Place where Abortion is performed

Under the new rules, non-governmental institutions may also take up abortions provided they obtain a licence from the Chief Medical Officer of the district, thus eliminating the requirement of private clinics obtaining a Board Licence.

THE INFANT MILK SUBSTITUTES, FEEDING BOTTLES AND INFANT FOOD (Regulation of Production, Supply and Distribution) ACT, 1992

The Government of India enacted The Infant Milk Substitutes, Feeding Bottles and Infant Food (Regulation of Production, Supply and Distribution) Act in 1992. This Act came into effect from 1st August 1993. The main aim of this Act is to protect and promote breast-feeding and to ensure proper use of infant foods. It also aims to regulate the production, supply and distribution of infant milk substitutes and feeding bottles. The Act prohibits all sorts of advertising to create an impression or belief that feeding infant milk substitutes is equivalent to or better than mother's milk or to promote the use of an sale of infant milk substitutes or feeding bottles against the provisions of the Act.

Under this Act, no person is entitled to use any health care system for the display of placards or posters relating to, or for the distribution of materials for the purpose of promoting the use or sale of infant milk substitutes or feeding bottles or infant feed. No person who produces, supplies, distributes or sells infant milk substitutes or feeding bottles or infant foods, entitled to make any

payment to any person who works in the health care system for the purpose of promoting the use or sale of such substitutes or bottles or foods.

The officer authorised by the State Government under Section 12 of the Act is:

i) A medical officer in charge of the health administration of a local area; or

ii) A graduate in medicine and has received atleast one month's training in food inspection and sampling work approved for the purpose of food inspection under the Prevention of Food Adulteration Act, 1954. He is responsible for application and spreading information about the Act.

The information, besides the information specified in Clause (a) to (f) of sub-section (1) of Section 7 would be included in every educational or other material, whether audio or visual dealing with pre-natal, post-natal care or with the feeding of an infant and intended to reach pregnant women and mothers of infants should include:

(A) The following details of advantages, as also nutritional superiority of breast feeding:

(i) Immediately after delivery, breast milk is yellowish and sticky. This milk is called colostrum, which is secreted during the first week of delivery. Colostrum is more nutritious than that of mature milk because it contains more protein, more anti-infective properties which are of a great importance for the infant's defence against dangerous neonatal infections. It also contains higher levels of Vitamin 'A'.

(ii) breast milk –

- is a complete and balanced food and provides all the nutrients needed by the infant in the first few months of its birth;
- has anti-infective properties that protect the infant from infection in the early months;
- is always available;
- needs no utensils or water (which might carry germs) or fuel for its preparation.

(iii) Breast feeding is much cheaper than feeding infant milk substitutes as the cost of the extra food needed by the mother is negligible compared to the cost of feeding infant milk substitutes.

(iv) Mothers who breast feed usually have longer periods of infertility after child birth.

(B) Details of management of breast feeding, as under:-

(i) Breast feeding –

- immediately after delivery enables the contraction of the womb and helps the mother to regain her figure quickly.
- is successful when the infant suckles frequently and the members wanting to breast-feed is confident in her ability to do so.

(ii) In order to promote and support breast feeding the mother's natural desire to breast feed should always be encouraged by giving, where needed, practical advice and making sure that she has the support of her relatives.

(iii) Adequate care for the breast and nipples should be taken during pregnancy.

(iv) It is also necessary to put the infant to the breast as soon as possible after delivery.

(v) Let the mother and the infant stay together after the delivery, the mother and her infant should be allowed to stay together (in hospital, this is called rooming in).

(vi) Give the infant colostrums as it is rich in many nutrients and anti-infective factors protecting the infants from infections during the few days of its birth.

(vii) The practice of discarding colostrums and giving sugar water, honey water, butter or other concoctions instead of colostrums should be very strongly discouraged.

(viii) Let the infants suckle on demand.

(ix) Every effort should be made to breast feed the infants whenever they cry.

An offence punishable under this Act is cognizable but bailable. Section 20 of the Act provides for penalty for violating the provisions of the Act. It may range from six months to three years of imprisonment and a fine upto Rs.5,000/-.

Review Questions:

1. Explain the importance of Central Birth and Death Registration Act 1969.
2. Explain the responsibility fixed for reporting Births and Deaths.
3. Explain the role of Medical Officer while certifying Death.
4. Explain the conditions under which the pregnancy can be terminated.
5. Define the persons who can perform termination of pregnancy.
6. Explain the places where pregnancy termination can be performed.
7. What is the main aim of the Infant Milk Substitutes, Feeding Bottles and Infant Food Act, 1992? Who is authorised by the State Government to take action under this Act?
8. Explain the advantages and nutritional superiority of breast milk.
9. Explain the details of management of breast feeding.

* * *

UNIT – II

TRANSPLANTATION OF HUMAN ORGANS ACT, 1994

With the advancement of science, it has been found that human organs like kidney, heart, liver etc. could be transplanted without much difficulty. This sort of transplantation was done to save the lives of those in critical conditions. Human organ such as kidney was usually donated by a close relative of the patient. Since of late, unscrupulous persons are donating kidney for the sake of money. The transplant racket is now estimated to amount to Rs.40 crores a year. This has forced the government to enact a law to prohibit the sale of kidneys and to punish those involved in illegal transplantation of human organs. Thus "The Transplantation of Human Organs Act" came into existence in1994.

Aim of the Act

This law is enacted to provide for the regulation of removal, storage and transplantation of human organs for therapeutic purposes and for the prevention of commercial dealings in human organs and for matters connected with them.

DEFINITIONS

Donor

A donor is any person above the age of 18 years who voluntarily authorizes the removal of his organs for therapeutic purposes.

Hospital

A hospital includes a nursing home, clinic, medical centre, medical or teaching institution functioning for therapeutic purposes.

Human Organ

The human organ is any part of the human body consisting of a structured arrangement of tissues which, if fully removed, cannot be replicated by the body itself.

Near Relative

Near relative means a spouse, son, daughter, father, mother, brother and sister. Nobody beyond this is to be called a near relative.

Recipient

The recipient is the person in whom an organ is proposed to be transplanted.

Registered Medical Practitioner

A registered medical practitioner under this At is the one registered under the Indian Medical Council Act of 1956, meaning an allopath, an MBBS doctor and not belonging to any other system of Medicine.

Therapeutic

Therapeutic purpose is systematic treatment of any disease or measures to improve health according to any particular method or modality.

Transplantation

Transplantation is grafting of the human organ from any living or dead person to some other living person for therapeutic purpose.

DONOR CATEGORIES

The Act clearly places donors into various categories. First is the live donor authorising removal before death and applies to organs which are bilateral and can be spared. The second is the person who makes a will in writing donating organs to be removed after death. The will is witnessed by two or more persons. One of whcm is the nearest relative. After his or her death, the person in lawful possession of the body can authorise removal of the organ provided he is satisfied that the will was not changed later. The third category are persons in lawful possession of the body, who are absolutely certain that the dead person never had any objection to removal of parts of his body and therefore consent to organ removal.

According to the Act, the organs can be removed only by a registered medical practitioner and nobody else. Experts doing transplantation must have post graduate qualifications with at least three years experience after MS.

Before removal of organ, in case of death, it must be confirmed by a board of medical experts approved by the appropriate authority. They are:

- The registered medical practitioner in charge of the hospital where the death has occurred.
- An independent specialist nominated by him (i.e. the person certifying death should not be a member of the transplant team).
- A neurosurgeon or neurologist, also nominated by the hospital-in-charge; and
- The registered medical practitioner treating the patient.

The doctor in charge of the hospital must select specialists from a panel approved by the appropriate authorities appointed by the Central Government for Union Territories and by State Government for the States.

Organs for transplantation can be removed from a living or dead child below the age of 18 years with the consent of either of the parents.

If an inquest is ordered into any death, organs cannot be removed if they are required to arrive at the cause of death. In the case of unclaimed bodies lying in hospitals or prisons, the authority to remove organs rests in the person in charge of the hospital, but only after waiting 48 hours for lawful claimants (by which time the organs may lose their utility value).

Where a post-mortem examination is required to be done, authorization for removal of the part can be made provided that organ is not required for the purpose for which the post-mortem is done. For example, if a person dies an accidental death falling down from a height, his eyes can be donated as they would not be useful in determining the cause of death.

Preservation of the organ after removal is the responsibility of the doctor. The Act protects him against charges of mutilating the body or offending religious or emotional sentiments which are considered offences under Section 297 of the Indian Penal Code.

Live Donation:

As far as live donor is concerned, he can donate his organ only to a near relative, i.e. husband and wife, father and mother, son and daughter and sister. It is this clause that attempts to prevent malpractice in transplantation including sale of the organ. But there is an additional clause that says that if the donor and

the recipient jointly make an application, the appropriate authority may permit live un-related transplants based on merit in genuine cases.

Every hospital offering transplant services must be registered with the appropriate authority, over and above, registration under the Hospital and Nursing Home Registration Act. The transplant, must be performed for therapeutic and not other purpose such as experiments or research.

Except for eyes and ears which can be removed at any place, other organs for transplantation have to be removed at the registered hospital. Informed consent of donor and recipient is required for carrying out transplantation.

Functions of the Appropriate Authority

The functions of the appropriate authority appointed by government are:

- to register or renew registration of hospitals;
- to suspend or cancel the registration when required;
- to enforce standards laid down under the Act; and
- to investigate complaints of Act violation.

Members are also expected periodically to inspect the registered hospitals. Registration for carrying out transplants is valid for five years, and may be renewed every five years by paying the prescribed fee.

Powers of the Appropriate Authority

- It can issue show cause notice on receiving a complaint or move sue-moto when things come to living without waiting to the approached.
- It can suspend or cancel hospital registration and also recommend to the Medical Council to suspend the registration of any doctor found guilty under the Act.
- It can impose penalty for the doctor for imprisonment of five years with or without a fine upto Rs.10,000.
- It can suspend Medical Council Registration for two years for the first offence and permanently thereafter.
- Commercial dealings in any form are punishable with a fine of Rs.10,000 to Rs.20,000 and imprisonment for seven years.

The jurisdiction of the Act lies with the magistrate's court, metropolitan or judical magistrate of first class.

Critical Analysis of the Act:

The Transplantation of Human Organs Bill was passed June 1994 and the President had given his assent in July. But this vital legislation was gathering dust for six long months before it was notified by the Central Government. The delay reflected a lack of urgency among the officials to put an end to the malpractices in "Kidney trade" in several cities of India. At present the law is endorsed only by a minimum number of States. If this law is not adopted by all the States, the malpractices in organ transplantation can flourish in other States. The Central Government and the public must exert pressure on the State Governments to adopt the Act as soon as possible.

The Act does not prohibit the transplantation of human organs in all cases but merely require that the approval of the special authorities (Committee to be constituted) be taken before a transplantation is performed, if the donor and the recipient are not related to each other. This provision leaves some room for racketeering in organ sale.

The punishment under the Act of two years imprisonment extending to the maximum of seven may not be enough of a deterrent to those doctors who can perform organ transplants clandestinely and earn lakhs of rupees from the nefarious trade. The fine of Rs.10,000 to Rs.20,000 for a middle man is laughable because a tout can earn as much on a single sale.

Suggestions for Effective Implementation of the Act

The Act may push the organ trade further underground if appropriate steps are not taken by the Government to prevent the causes of the trade. Legislation at best can adversely effect organ trade only marginally.

The Central Government and the NGO's promoting health in different States must exert pressure on the State Governments, which have not adopted the Act.

A self monitoring mechanism among the medical community must be generated to dissuade the practice of organ trade and to expose the "few unscrupulous ones" who are tarnishing the image of the fraternity.

With the kind of money involved, the penalty of Rs.10,000 and imprisonment upto five years may not prove to be much of a deterrent. Hence, fine must be enhanced considerably.

Doctors who violate this law should be ruthlessly punished. The government must cancel the license of the errant doctors engaged in this inhuman and unethical practice.

Government must take the imitative to crack down the nexus between the foreign recipients and the Indian doctors and their agents involved in the illegal practice of organ transplantation.

Initiative must be taken by NGO's working in the health field to study the moral and ethical issues involved in the organ transplantation. The law must be implemented both in letter and spirit, otherwise the notification of the Act will not make any sense.

PRE-NATAL DIAGNOSTIC TECHNIQUES (Regulation and Prevention of Misuse) ACT, 1994

According to 2001 census, India became the second country in the world to cross the one billion mark. Though the population of the country rose by 21.34% between 1991and 2001, the child sex ratio declined shockingly. The child sex ratio is calculated as number of girls per 1000 boys in the 0-6 years age group. The sex ratio at birth is usually 940 to 950 girls per 1000 boys. Over the years, this has fallen and 1991 censes reported a child sex ratio of 945 girls per 1000 boys which further declined to 927 during 2001 census. In Tamil Nadu, all age sex ratio in 1991 was 974 per 1000 male and 986 per 1000 male in 2001. The child sex ratio (0-6 years) which was 948 female children to 1000 male children declined as 939 female children to 1000 male children. Society needs to recognise this discrimination. More numbers of either sex and the resulting imbalance can destroy the social and human structure.

In States such as Punjab, Haryana, Gujarat and Delhi, child sex ratio has declined to less than 900 girls per 1000 boys. In Kurushetra of Haryana District this ratio stands at a maximum 770 girls per 1000 boys. There are reasons to

believe that the practice of elimination of female fetuses is one of the important contributions to the adverse child sex ratio. There is also strong preference for sons which is influenced by many socio-economic and cultural factors such as, the son being responsible for carrying forward the family name and occupation and a source of support during old age and for performing religious rites at the time of cremation and subsequently the practice of dowry and daughters being viewed to be married and sent away. Different scientific techniques such as amniocenteses and sonography were advented to detect genetic disorders in the foetus. But these techniques were supported to be used mainly to detect the genetic deformities at the Pre-Natal stage has become very popular for detection of the sex of a foetus and elimination of female foetus through abortions. Alarmed by this situation, Government of India enacted "Pre-Natal Diagnostic Techniques" (Regulation and Prevention of Misuse) Act in 1994. PNDT Act 1994 came into force with effect from January 1, 1996 prohibits the tests rather it permits the same in certain situations with certain conditions for detecting the genetic disorders of the foetus with a condition not to disclose the sex of the foetus to the woman or her relatives in any form or way.

The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act 2002 came into force with effect from 14th February, 2003. PNDT Act 1994 now stands renamed as "The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act." The Act provides for the prohibition of sex selection, before or after conception. It regulates the use of Pre-Natal Diagnostic Techniques such as ultra sound for the purpose of detecting genetic abnormalities or other sex linked disorders in the foetus. The purpose is to prevent misuse of such techniques for sex determination which lead to elimination of the female foetus and thereby create a gender imbalanced society.

The main provisions of the PNDT Act are as follows:

Section-3

a. Only registered Genetic Centres, Laboratory or Clinics can carry out pre-natal diagnostic tests.

b. Only medical person who possesses the medical qualification prescribed in the Act can conduct the test (Sonologist).

c. Only in the place registered under this Act.

d. No person shall sell any ultrasound machine or scanner or any other equipment capable of detecting sex of foetus to any counselling center, laboratory or person not registered under the Act.

Section-4 Clause-3

Pre-Natal Diagnostic Techniques shall be used or conducted unless the person qualified to do so is satisfied in one or more of the following conditions:

a. Age of the pregnant woman is above 35 years.

b. The pregnant woman has undergone two or more spontaneous abortions or foetal loss.

c. The pregnant woman had been exposed to drugs, radiation, chemicals or infection.

d. The pregnant woman or her spouse has a family history of mental retardation or physical deformities.

Section-4 Clause-4

No person including a relative or husband of the pregnant woman shall seek or encourage to conduct of any Pre-Natal Diagnostic Techniques on her except for the purposes specified in Clause 2.

Section-5

The person carrying out PNDT has to obtain the informed consent of the woman in the prescribed form and language she understands. She must be made aware about the possible side effects. An undertaking is also required from the woman to the effect that she will not terminate the pregnancy, ***if there is a normal child of either sex.***

Section-5 Clause-2

No person including the person conducting PNDT shall communicate to the pregnant woman concerned or her relatives or any other person the sex of the foetus by words, signs or in any other manner.

Section-6

No person shall, by whatever means, causes or allow to be caused selection of sex before or after conception.

Section-16

Functions of the State Board:

- To advise the Central Government on policy matters relating to use of pre-natal diagnostic techniques, sex selection techniques and against their misuse.
- To review and monitor implementation of the Act and Rules made there under and recommend to the Central Government changes in the said Act and Rules.
- To create public awareness against the practice of pre-conception sex selection and pre-natal determination of sex of foetus leading to female foeticide.
- To lay down code of conduct to be observed by persons working at Genetic Counselling Centres, Genetic Laboratories and Genetic Clinics.
- To oversee the performance of various bodies constituted under the Act and take appropriate steps to ensure its proper and effective implementation.
- Any other functions as may be prescribed under the Act.

Section-16A

Functions of the State Supervising Board:

- To create public awareness against the practice of pre-conception sex selection and pre-natal determination of sex of foetus leading to female foeticide in the State.
- To review the activities of the Appropriate Authorities functioning in the State and recommend appropriate action on violation of the Act.
- To monitor implementation of provisions of the Act and the Rules and make suitable recommendations relating thereto, to the Board.
- To send such consolidated reports as may be prescribed in respect of various activities undertaken in the State under the Act to the Board and the Central Government.
- Any other functions as may be prescribed under the Act.

Section-17

Members of the Appropriate Authority:

- An officer of or above the rank of the Joint Director of Health and Family Welfare-Chairperson.
- An eminent woman representing Women's Organisation; and
- An Officer of Law Department of the State or the Union Territory concerned.

Functions of the Appropriate Authority

i) To grant registration or cancel registrations.

ii) To take appropriate legal action against the use of any sex selection technique by any person at any place, sue-moto or brought to its notice and also to initiate independent investigations in such matter.

iii) To create public awareness against the practice of sex selection or pre-natal determination of sex.

iv) To supervise the implementation of the provisions of the Act and Rules.

v) To recommend to the Central Board and State Boards modifications required in the rules in accordance with changes in technology or social conditions.

vi) To take action on the recommendations of the Advisory Committee made after investigation of complaint for suspension or cancellation of registration.

Section-17A

Powers of Appropriate Authority:

- Summoning of any person who is in possession of any information relating to violation of the provisions of this Act or the Rules made thereunder.
- Production of any document or materials or object relating to clause(a).
- Issuing search warrant for any place suspected to be indulging in sex selection techniques or pre-natal sex determination; and
- Any other mater which may be prescribed.

Section-18

No person shall open any Genetic Counselling Centre Laboratory/ Clinic having ultra sound or scanner or render services to any of them unless such Centre/ Laboratory/ Clinic is duly registered under the Act.

Section-22

(1) No person/ organisation/ genetic counselling centre/ laboratory/ clinic having ultra sound machine/ scanner capable of undertaking determination of sex of foetus shall issue, publish any advertisement in any form regarding facilities of pre-natal determination of sex or sex selection before conception available at such centre.

(2) Any person who contravenes the provisions of this section shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to Rs.10,000/-.

Section-23

(1) If charges are framed against the Medical Practitioner, his/her registration in the Medical Council will be suspended till the case is disposed of and on conviction his/her name will be removed for a period of 5 years for the first offence and permanently for the subsequent offence.

(2) Any person who seeks the help of Genetic Counselling Centre/ Clinic/ Laboratory for sex selection he/she shall be punishable with imprisonment for a term which may extend to 3 years and with fine which may extend to Rs.50,000/- for the first offence and for any subsequent offence with imprisonment which may extend to 5 years and with fine which may extend to Rs.1,00,000/-.

MEDICAL NEGLIGENCE

Medical negligence is sometimes called as professional misconduct may also be described as malpractice. Most instances of medical negligence lie completely within the civil law and cases where negligence has been so gross as to constitute a criminal offence are exceptionally rare.

LAW OF TORTS

Negligence, medical or otherwise, is a civil wrong known as a tort, where a person fails to take proper care, so that damage results. For negligence of any kind to be proved, it must be shown that all four of the following components exist:

1. That the defendant (doctor) owed a duty of care to the plaintiff (patient).
2. That the defendant was in breach of that duty.
3. That the plaintiff suffered damage.
4. That the damage was caused by the breach of duty of care.

Applied to the medical situation, negligence is a failure of the duty owed by a doctor to his patient, to exercise reasonable care and skill resulting in some bodily, mental or financial disability.

The Duty of Care

A doctor must possess a reasonable degree of proficiency. This degree of competence is not a fixed quality, but varies according to the status of the doctor. Though there is a minimum level of competence for all doctors, the standard of skill varies through a whole spectrum from new graduate to senior consultant.

No doctor can be expected to be aware of all current medical knowledge nor be able to apply to known diagnostic and therapeutic techniques:

A house surgeon is not expected to possess the same skills as a consultant surgeon but at the same time, he is expected to confine his activities (except in emergencies) to a level of medical care which is within his competence. A house surgeon electing to perform a major surgical operation, not in an urgent situation, might be held guilty of negligence, if damage ensues.

Where a senior doctor delegates a task to junior, he must assure himself that this assistant is sufficiently competent and experienced to do the job; if damage occurs as a result of improper delegation, then the senior doctor may have carry part or even all the responsibility.

The negligence can only occur when a doctor-patient relationship is established. This relationship may be formed easily, such as charging a fee or inclusion on a practice list. Even in an acute emergency, once a doctor

approaches on all or injured person with the intention of assisting him, then a completely valid duty of care is set up.

A doctor is not negligent if he does not offer his services is an emergency to a person who is not already his patient, as no doctor patient relationship exists, though the ethics are questionable.

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A doctor is not negligent if he does not offer his services in an emergency to a person who is not already his patient, as no doctor patient relationship exists, though the ethics are questionable.

Breach of Duty to Exercise Reasonable Skill and Care

A doctor breaches his duty of care when he fails to reach the standard of proficiency expected of him. The level of this expectation is set by 'peer review'. In other words, what a substantial number of doctors skilled in the same speciality would have done in exactly the same circumstances if they had been in his place at that time.

The breach may be one of commission or omission, that is either doing something wrong or failing to do something right. Carelessly taping off an ureter during a hysterectomy is an act of commission whilst failing to give anti-tetanus toxoid after a penetrating harming injury would be one of omission.

Damage Suffered by the Patient

However careless the doctor might be, a patient cannot sue him for negligence if no damage has been caused. The plaintiff must have suffered some loss which can be measured and compensated for in terms of money. Examples of such loss are:

(1) Loss of earnings, whether due to enforced absence from work of prevention or impairment of his ability to carry on his previous occupation, so that he is forced to take employment at a lower level of salary; or from loss of expectation of life and the consequent shortening of the earning period.

(2) Expenses.

(3) Reduction in expectation of life, apart from the financial aspect.

(4) Reduced enjoyment of life, from any physical or mental consequence of the negligent act. Examples would be loss of mobility of limb or sense, which would reduce mobility or appreciation of his surroundings.

(5) Especially in the case of women, some physical disability or disfigurement which might reduce the chances of marriage or ability to have further children might also be actionable.

(6) Pain and suffering, whether physical or mental, may also be taken into account, as may mental or nervous shock.

(7) Death may be actionable for the benefit of dependent relatives.

Error of Clinical Judgement

There is widespread misapprehension amongst the public and even some lawyers, that if anything goes wrong with medical treatment or diagnosis, then inevitably there must have been negligence on the part of the doctor. Most mishaps comes within the ambit of an 'error of clinical judgement', which is not negligence. There is often a very fine line between the two situations and a grey area in which diversity of opinion may be found on poor view.

However, a doctor is not legally liable for genuine errors of judgement either in diagnosis or treatment. So long as he applies a reasonable standard of skill and care in coming to that judgement, he cannot be held negligent. As his error is not due to a degree of incompetence, carelessness of recklessness. A doctor does not guarantee to provide the best possible care, but only care consistent with his professional status. As yet another famous judge said, 'Doctors are not insurers' and cannot guarantee the perfect result expected of an architect or civil engineer.

The Burden of Proof

Normally, the task of proving negligence rests upon the plaintiff the person bringing the action, so the defendant does not need to prove his innocence. An exception to this general rule that the 'burden of proof rests upon the plaintiff, is in cases where the facts are so obvious that the onus is shifted to

the doctor to prove that he was not negligent. This doctrine of (the facts speak for themselves) applies when, for instance, the wrong limb or digit is amputated at operation. It is for the surgeon, to show-if he can that the negligence was not his doing.

Contributory Negligence

The patient does something on his own account to worsen the injury or retard its recovery. This may occur when, for example the patient tampers with his dressings and induces infection; or removes a plaster cast or bandage; or more commonly, ignores instruction to return for further treatment or follow-up. In such cases the damages recoverable in respect thereof shall be reduced to such an extent as the court thinks just and equitable, having regard to the claimant's share in the responsibility for the damage. In claiming that there was contributory negligence, that it existed.

Common Forms of Medical Negligence

Medical negligence may assume a variety of forms. These include the following:

(i) ***Failure to attend:*** Failure of a general practitioner to respond to a request for attendance may form grounds for an action for negligence, especially in relation to emergencies.

(ii) ***Amputation of the wrong limb or digit:*** Carelessness in hospital notes, errors in preoperative skin marking and failure to check notes against the patient in the operating theatre are common causes for this highly actionable misadventure. A similar mistake involves operating on the wrong patient altogether.

(iii) ***Negligence in operation:*** Any surgical procedure may give rise to allegations of negligence but orthopedics, obstetrics, surgery and gynecology are high risk specialities. Missed fractures tight plaster casts and poor results from spinal procedures are common complaints in orthopedics. In obstetrics, damage to the newborn from anoxia or forceps procedures damages of great magnitude. Failed tubal sterlisation is another common cause for litigation in gynecology, as is a failure of vasectomy in general surgery. A common error is operating on wrong side and if the operation is performed on an organ and another is injured.

(iv) ***Retention of objects in operation sites:*** Where swabs, packs, towels or instruments may be left behind in the abdomen after operation, the responsibility remains with the surgeon and even if the theatre sister has the actual task of maintaining a swab count. The surgeon must satisfy himself that she is correct before closing the abdomen.

(v) ***Accident and emergency departments:*** In the medico-legal sense the A & E department is the most dangerous part of a hospital. Until recent years it was commonly the practice for the least experienced doctors to deal with this most hazardous department. Fractures, head injuries and lacerations account for much of the danger and junior staff employed in A & E departments should not hesitate to request the advice of more senior colleagues where there is the slightest doubt as to the proper course of action..

(vi) ***Anesthesia:*** Anesthesia is a potential source of allegation of negligence. The constant vigilance during anesthesia falls within the ambit of duty of the anesthetist. It is the duty of anesthetist to check the equipments and machine prior to operation and also that they function correctly throughout the period when the patient was dependent on it. An anesthetist administered chloroform in spite of the availability of another drug. The patient died. The anesthetist had to pay compensation.

In spinal anesthesia, selection of the proper site (to avoid damage to the chord) is expected. In one case higher injection of spinal anesthesia resulted in injury. The anesthetist had to pay damages.

(vii) ***Negligent exposure of patient to infection:*** The professionals cannot escape their liability in tort for negligent performance of duty, even if he does the work free of cost or for good-will reasons. An eye camp was organised for extending expert ophthalmic surgical services to the cataract patients of a particular place in Uttar Pradesh. Unfortunately, the operated eye of patients were irreversibly damaged due to post-operative infection by the normal saline used at the time of surgery. A public interest litigation was filed before the Supreme Court. The court directed the State Government to pay Rs.12,500/- to each victim as a compensation for the negligence (A.S. Mittal Vs. State of U.P. (1989) 3 SCC 223).

(viii) ***Negligent administering of wrong medicine:*** A medical practitioner is held liable even if wrong medicine is administered by mistake. A simple lack of care would amount to civil liability. But, when a person knowingly act different to risk it will amount to recklessness, and negligence or rashness of very high degree would amount to criminal negligence.

As held in Juggankhan Vs.State of Madhya Pradesh (1965), (ICSR 14: 1965 SC 831) by the Supreme Court that when a registered Homeopath administered the medicine without thoroughly studying the effect of treatment given, it is a rash and negligent act to prescribe poisonous medicine without studying their probable effects.

(ix) ***Negligence in post-operative care:*** After the operation, hospital authorities are expected to take reasonable care of the patient. The Plaintiff was suffering from an injury in the third and fourth fingers of his left hand. He was operated on at the defendants hospital, by a surgeon. After the operation, the plaintiff's hand and forearm were bandaged to a splint and kept like that for two weeks. During this time, the plaintiff complained of pain. However, the surgeon took no action, apart from giving sedatives. When the bandages were removed, all four fingers of the plaintiff's hand were stiff and the hand was practically useless. The defendant (hospital) was held liable for the negligence of the surgeon.

(x) ***Therapeutic hazards:*** Drugs with well known potential dangers must also be handled with care. For instance, it would be negligent for a doctor to give penicillin to a penicillin allergic patient if he was aware of the possible allergy or had not enquired as to its presence. Substance known to cause serious or fatal reactions such, ATS, should only be administered after a test dose. Another common error is the administration of the wrong drug or the wrong dose of the right drug.

Hospitals are liable for the Negligence of its Employees in India

According to the Madras view, a suit for damages does not lie against the Government in such cases. In the Madras case, child has been admitted in Government hospital for treatment. On discharge, the child was handed over to a wrong person and the parents were later unable to trace the child. They used

government for negligence, but failed. The High Court held that running a hospital was a sovereign function and the Government was not liable for acts done in the performance of sovereign functions.

However, the Bombay view on the subject is different. The Bombay High Court had held that the State is liable in such cases. But it should be added that before suing, the Government or a public officer, two months written notice is necessary, under section 80, Code of Civil Procedure, 1908.

Now, it is a well settled law, that hospital whether it is government, public or private, when the services are provided in lieu of consideration the hospital is liable for any negligent act. But, when a hospital is providing services free of charge it is not held to be liable for negligence of employees. When Doctors fail in performing or commit lapse advertently then they are open for both Criminal and Civil Liability.

Criminal Liability

It arises when it is proved that doctor committed or omitted that was grossly rash or negligent which was direct or subsequent cause of patient death under 304 (A) doctor is punishable with imprisonment for 2 years or fined or both. This is a bailable offence. Police cannot hold a doctor once bail papers are furnished. In a wrongfully confinement by Police a Station House Officer can be charged under section 342 of IPC.

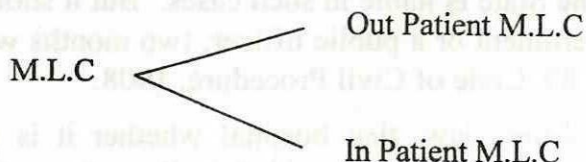
Civil Liability

It arises in case of medical services rendered on payment of a fee. These come within purview of section 73 and 74 of India Contract. In a suit by patient onus is on patient to prove that Doctor was negligent. Even if patient does not pay civil liability can arise under law of torts to all category-Private or Government.

In India, the number of suits against physicians for torts or civil wrongs such as negligence, assault, etc. is insignificant, perhaps less than 0.001% physicians are dragged to the court by their patients. The corresponding figures for an advanced country like U.S.A. is 1.5%.

MEDICO LEGAL CASE (M.L.C)

Cases requiring medical treatment, by the same time involves information to the law enforcing authorities is called a medico legal case.



Types of Medico Legal Cases

- All Road Traffic Accidents
- All Rail Traffic Accidents
- Burns
- Scalds
- Hanging
- Electrocutions
- Poisoning
- Drowning
- Bomb Blasts and Explosions
- Vitriolage
- All Air and Sea Accidents
- Any other cases having legal implication
- Assault – Known; Unknown
- Legal Intervention (injury caused by police action-lathi charge etc.)
- Natural Disasters – Earthquakes, Lightning, Volcanoes, Floods, Building collapse.
- Molestations – Rape, Kidnapping, Husband/ Wife beating, Child abuse.
- Inhalation of Gas and Vapours

- Fall from Height
- Brought Dead (Cause of death not known)
- Industrial Accidents
- Bull gore/ animal bite/ snake bite etc (Sec. 350, 351 IPC)
- Bullet Injury
- Kidnapping
- Hijacking
- Hostage Taking
- Possession of Fire Arms with intent to injure
- Anything related to Smuggling

Medico Legal Case in Private Hospitals

Formalities for a M.L.C.

- Entry like Name/. Age/ Sex/ Date/ Time/ I.P. No./ Hosp. No./ Type of M.L.C. is done in the main Emergency Register.
- All M.L.C's are registered/ admitted.
- Case is examined and case sheet written by the duty Casualty Medical Officer.
- Accident Register (A.R) two copies and Police Intimation (P.I) three copies are written.
- The original P.I. form should be dispatched to the assigned Police Station as quick as possible (not later than 24 hours) and the signature of the receiving Police Officer should be obtained.

In most of the Government hospitals, police stations are inside the hospital premises. In private hospitals – despatch the accident register and police intimation to nearby police station.

Nature of Injury

i) Simple

ii) Grievous

iii) Opinion Reserved

In the case of ***opinion reserved***, the nature of wound is given in the 'Wound Certificate' at a later date with expert opinion. When a wound certificate requisition is given to the medical records department either from patient or by police, the wound certificate is obtained from Casualty Medical Officer who has written the accident register.

If the nature of injury is ***grievous***, it should be explained with details of grievous wounds. According to Sec.320 (IPC) the following injuries are grievous:

- Emasculation (Depriving a male of masculine vigour)
- Permanent privation of sight of either eye.
- Permanent privation of hearing of either ear.
- Privation of any member (means an organ) or joint.
- Destruction or permanent impairing of the powers of any member or joint.
- Permanent disfiguration of the head or face.
- Fracture or dislocation of bone or tooth.
- Any hurt which endangers life or which causes the victim to being severe bodily pain or unable to follow his ordinary pursuits, i.e. routine work for a period of twenty days.

Writing a Medico Legal Case

Road Traffic Accident

Write as Alleged R.T.A. involving car or car/ car or cycle/ bus or car/ bus or lorry/ bus or scooter/ skid or fall from two wheeler or hit and run or etc.

Write vehicle number, if known.

Write the following details in the case file:

- Mode of Accident
- Time of Accident
- Place of Accident
- Brought by Name is a must
- Brought in time
- Condition of the patient after accident
- Condition of the patient at the time of admission
- Injuries
- 3 I.D. Marks Preferable (2 I.D. Marks must)
- Sign at the end of the case file

} To be followed for all Medico Legal Cases wherever applicable

Identification Marks

It is better to note down at least 3 identification marks. If only two identification marks are recorded there may be a chance of loosing one of the mark due to amputation of the body part or otherwise.

The following marks can be taken for identification:

(1) Congenital: Birth marks, mole naevus, web fingers or toes, talipes, cleft palate, hare lip etc.

(2) Acquired: Scars, tattoo marks, deformities, old amputations etc.

Assault

Write as Alleged assault by known/ unknown/ single person/ a group.

Assault by hand/ knife/ weapon etc.

Railway Accident

Write as Alleged Railway track accident (or) Alleged to injured in a train accident/ Collision between 'X' train and 'Y' train/ Derailment.

Poisoning

Write as Alleged to have consumed poison/ tablets.

Sent urine/ blood/ gastric contents for forensic examination.

Drowning

Write as Alleged drowning in fresh water/ sea water.

Burns

Write as alleged to have sustained burns.

Always write burns injury in percentage (Burns chart preferred)

Always take history from the patient if conscious.

If patient is unconscious take the history from the nearest relative.

Natural Disaster

Alleged to have injured by earthquake/ lightning/ volcanoes/ floods.

Building collapse etc.

Molestations

Rape

Write as Alleged by rape by known/ unknown/ single person/ group

Patient should be examined by the Gynecologist.

Kidnapping

Write as Alleged to have kidnapped by known/ unknown/ single person/ group.

Wife/ Husband Beating

Medico Legal is registered, provided one of them insists on it.

Write as Alleged to have beaten up by husband/ wife.

Child Abuse

Write as Alleged child abuse by known/ unknown/ single person/ group.

Electrocution

Write as Alleged electrocution.

Always mention about entry and the exit wound.

Always remember that an electrocuted person may pass a period of suspended animation (an apparently life-less period) and recover after this period.

Fall from Height

Write as Alleged fall from height – accidental/ suicidal/ homicidal.

Industrial Accident

Write as Alleged to have sustained industrial accident while …….

Bull Gore/ Animal bite/ Snake bite

Write as Alleged case of Bull Gore injury/ Animal bite/ Snake bite.

Bomb Blast/ Explosions

Write as Alleged Bomb blast/ Explosions.

Gun Shot/ Bullet Injury

Write as Alleged to have shot himself/ shot by know/ unknown/ single person/ gang. In case of gunshot injuries, bullet entry and exit details should be mentioned.

Do not meddle with the bullet.

DYING DECLARATION

Definition

Dying declaration is defined as the written or verbal statement made by a person – likely to die because of some unnatural act done on his body, narrating the circumstances or the conditions responsible for his/her present state of health or the cause and manner of likely unnatural death.

Precautions

The precautions to be taken, while recording dying declaration are:

- Ideally dying declaration should be recorded by Executive or Honorary Magistrate.

- If the condition of the patient is serious and not time to call magistrate, the doctors should take the declaration in the presence of two neutral witnesses.
- Doctor has to certify the patient to be 'Compos Mentis'.
- During recording no police officer is allowed to be present.
- No oath is administered.
- Leading questions are not permitted.
- It is recorded in question-answer form.
- It is recorded in vernacular of patient.
- At the end it is signed by magistrate (if present), the patient, the doctor, and the two witnesses.

Special Circumstances

- If the patient cannot write e.g. in cases of burns, his oral statements are recorded.
- If the patient can neither write nor speak e.g. cut throat injury or cases of poisoning – the signs and gestures made by the patient are video recorded.
- If the patient dies during recording – the doctor examines and certifies the patient to be dead and then the incomplete dying declaration is signed by all the concerned.

Importance

The importance of recording dying declaration is:

- As per Section 32 and 157 of Indian Evidence Act, every person during last stages of life speaks total truth, therefore great sanctity is attached to dying declaration. It is regarded as an important evidence in that case.
- If the patient does not die after the recording of the declaration, the dying declaration loses its importance, since now he can be called to court and his evidence can be recorded after cross examination.
- If the patient survives for a few days after recording, the dying declaration retains its full value.

Breaking the Death News

- Prepare yourself presentable before leaving the resuscitation room.
- Ensure that you are speaking with the correct relatives of the deceased.
- Introduce yourself who are to the patient's (deceased) relatives.
- Take the relatives to a separate room and ask them to sit before breaking the news.
- Speak slowly, keep the sentences short and non-technical while communicating the information.
- Never use the words like 'Passed away' or 'Gone to better place' etc.

Death Certificate

Following are the facts to be taken in consideration while issuing death certificates.

- Should be issued only by a Registered Medical Practitioner (RMP).
- No certificate is to be issued without examining the person.
- In cases of any suspicion of foul play, death certificate must not be issued and the matter should be brought to the police authority.
- Physician must be sure about the cause of death before issuing the death certificate.
- During issuing the Death Certificate using terms such as "Cardio Pulmonary Arrest" or "Respiratory Failure" are not acceptable. Remember everyone dies of "cardiopulmonary arrest". So listing "cardiac arrest" or "respiratory arrest" as the cause of death is not sufficient. Instead, a notation stating the events leading to death, such as "respiratory arrest secondary to hanging" is required.
- During issue of death certificate for the 2nd time due to any reason, the term 'Duplicate' must be mentioned.

- Physician should not issue death certificate if he has not attended the patient during his last illness at least in the fortnight (15 days) before his death.
- As per the Birth and Death Registration Act, 1970, it is obligatory to inform the matter to the registering authority about the cause and nature of death with a copy of Death Certificate.
- Physician should not charge fees for issuing of death certificate and he should not refuse to give the certificate because he has not been paid his professional fees dues.
- Under no circumstances, a medical practitioner will sign a blank certificate before death of the patient and leave the task of filling in the details to some one else.

Whoever issues or signs any certificate relating to any fact knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if, he have false evidence (under Sec. 197 IPCS).

Issuing of false certificate by registered medical practitioner may lead to erasure of the name of the practitioner from the medical register.

So it is wise to maintain a register which will contain details of the medical certificate issued by a medical practitioner.

Death Certificate by Government

Death certificate is issued by Municipality or Corporation as per the death register.

Sudden Infant Death Syndrome (SIDS) Deaths

Any infant who dies where you have reason to suspect Sudden Infant Death Syndrome (SIDS) should be reported to the medical examiner for autopsy because the diagnosis of SIDS cannot be established without an autopsy.

UNIT – 3

LAWS PERTAINING TO MANUFACTURE AND SALE OF DRUGS

In the beginning of the current century Drug Industry was practically non-existent in India and pharmaceuticals were being imported from abroad. The Government was, therefore, called upon to take notice of the situation and consider the matter introducing legislation to control the manufacture, distribution and sale of drugs and medicines.

To have a comprehensive legislation over the rapid expansion of the pharmaceutical production and drug market, in 1931, Government of India appointed a Drug Enquiry Committee under the chairmanship of Lt. Col. R.N.Chopra which was asked to make stifling enquiries into the whole matter of drug production, distribution and sale by inviting opinions and meeting concerned people. The Chopra Committee toured all over the country and after carefully examining.the data placed before it, submitted a report to Government and suggested creation of drug control machinery at the Centre with branches in all Provinces. For an efficient and speedy working of the controlling department, the Committee also recommended the establishment of a well-equipped Central Drugs Laboratory with competent staff and experts in various branches of drug standardization work. For the training of young men and women, the Committee recommended the formation of Central Pharmacy Council and the Provincial Pharmacy Councils, with registrars who would maintain the lists containing names and addresses of the licensed pharmacists.

There are several Acts relating to manufacture and sale of drugs in India. Among them the following laws operate at present in the country:

1. The Drugs and Cosmetics Act of 1940
2. The Pharmacy Act of 1948
3. The Drugs and Magic Remedies (Objectionable Advertisement) Act of 1954.
4. The Narcotic Drugs and Psychotropic Substances Act, 1985.
5. The Poisons Act of 1919.

1. THE DRUGS AND COSMETICS ACT, 1940

The object of the Act is to regulate the import, manufacture, distribution and sale of drugs.

Under the provisions of this Act, the Central Government appoints the Drugs Technical Advisory Board to advise the Central Government and the State Government on technical matters arising out of the administration of this Act. The Board can constitute sub-committees for the consideration of a particular matter.

The Central Government may also constitute the Drug Consultative Committee to advise the Central Government, the State Government and the Drug Technical Advisory Board on any matter tending to secure uniformity throughout India in the administration of this Act.

The Drugs and Cosmetics Act prohibits import of:

a) Any drug (or cosmetic) which is not of standard quality

b) Any misbranded drug or spurious cosmetic

c) Any adulterated or spurious drug

d) Any drug (or cosmetic) for the import of which a license is prescribed

e) Any patent drug, if it is not labeled in prescribed manner displaying its true formula

f) Any drug which claims to cure and mitigate diseases prescribed

g) Any cosmetic containing unsafe or harmful ingredient; and

h) Any drug for which import is banned under the Act.

For any contravention of above mentioned provisions of the Act, the punishments prescribed vary from one year life imprisonment and with fine depending on the nature of the offence.

The Central Government has been given powers to import and manufacture for sale or distribution of such drugs which are therapeutically irrational or which involve risk to human beings or animals.

The Central Government and the State Governments can appoint Analysts with prescribed qualifications for specified drugs. The Government may also appoint Inspectors who possess the requisite qualifications. The Inspectors can

inspect any premises wherein any drug is being manufactured and take sample for which fair price will be paid. He can also enter and search at all reasonable times any place where he believes any offence is being committed and size stocks of drugs. Obstruction to the work of an inspector is punishable with imprisonment upto 3 years or fine.

The inspector on suspecting the quality of drug will get it tested by the Government Analyst who will deliver report which will be taken as conclusive evidence in a court, if challenged by the accused the drug will be sent to the Central Drug Laboratory whose decision will be binding on both the parties.

The Drug and Cosmetics Act has been amended in 1945, 1964, 1972, 1982, and 1986. The comprehensive amendments to the Act were made in 1964 and 1982.

The Drugs and Cosmetics (Amendment) Act of 1964

The object of the amendment was two-fold, first, to bring Ayurvedic and Unani drugs which were till then not covered by the law within the scope of the Act, secondly, to prohibit, the import, manufacture, sale etc. of adulterated, misbranded, spurious or substandard drugs.

Under the provisions of the amendment a drug shall be deemed to be adulterated if it consists, in whole or in apart filthy, putrid or decomposed substance, or if it has been prepared, packed or stored under insanitary conditions, if its container is composed of any poisonous or deleterious substances, if any substance is mixed or packed therewith so as to reduce its quality or strength.

The punishment for contravening the provisions of the law has been enhanced. Any one convicted second time of an offence under clause (a) of section 27 will be imprisoned for not less than two years, it may extend to ten years and he will also be liable to fine. In clause (b) of the same section for the words "five years" the words "ten years" have been substituted.

The Drugs and Cosmetics (Amendment) Act of 1982

It came into force with effect from 1st February, 1983. The main amendment made are:

a) The definition of the term 'drug' has been enlarged. Preparations used for repelling insects like mosquitoes, all substances intended for use as

components of drugs including empty gelatin capsules and devices used in diagnosis, treatment etc. of diseases (to be notified) are drugs.

b) Definitions of misbranded, adulterated drugs have been rationalised. A new term spurious Ayurvedic, Siddha or Unani drug has been provided for the first time. Similar misbranded and spurious cosmetics and misbranded and adultered Ayurvedic, Siddha drugs have been defined.

c) The Central Government has now acquired powers to ban by notification import and manufacture of such drugs which involve risk to human beings or animals or are therapeutically unsound.

d) Punishment for various contraventions of the provision of the Act have also been rationalized. For a drug, which is adulterated and is likely to cause death or grevious hurt, imprisonment of not less 5 years which may extend of life has been provided.

   For adultered and spurious drugs the punishments are upto three and five years respectively.

e) Powers of Inspectors have been enhanced. They can now stop and search any vehicle or vessel or any other conveyance.

f) Provision has been made for summary trial of offences under this Act.

The Drugs and Cosmetics (Amendment) Act of 1986

Sections 26 to 32 have been amended and this empowers any person or a consumer association to take samples of drugs for test/analysis and they can also prosecute firms for manufacture/sale of sub-standard drugs.

2. THE PHARMACY ACT, 1948

The Pharmacy Act was passed in 1948 and was amended in 1959, 1979 and 1984.

The aim of this law is to regulate the profession of pharmacy in India.

Central Pharmacy Council

Under the provisions of this act, the Central Government constitutes a Central Pharmacy Council of India consisting of following members:

a) Six members from the teachers of Pharmacy.

b) Six members from practising pharmacists or pharmaceutical chemists holding a degree or diploma.

c) One member elected by the Medical Council of India.

d) The Director General of Health Services.

e) The Director of the Central Drugs Laboratory.

f) The Chief Chemist, Central Revenues.

g) One member to represent each State elected members of state councils who shall be a registered pharmacist.

h) One member to represent each State Government who shall be either registered medical practitioner or a registered pharmacist.

With the approval of the Central Government, Central Council regulations prescribes the minimum standard of education required for qualification as a pharmacist. The regulations prescribe the nature and period of study and the practical training to be undertaken before admission to an examination, equipments and facilities to be provided for students, the subjects of examination and any other conditions for admission to examination.

The Executive Committee appoints Inspectors to Inspect any institution which provides an approved course of study, to attend at any approved examination and to inspect any institution whose authorities have applied for the approval of its course of study or examination. The inspectors report to the Executive Committee about their findings on the sufficiency of every examination and other matters.

State Pharmacy Councils

The Act makes it incumbent upon the State Government to constitute State Pharmacy Councils with the following members:

a) Six members elected from amongst themselves by registered pharmacists of the State.

b) Five members of whom at least two shall be persons possessing a prescribed degree or diploma in Pharmacy or Pharmaceutical

Chemistry or members of the Pharmaceutical Profession nominated by the State Government.

c) One member elected by the State Medical Council.

d) The Chief Administrative Medical Officer of the State.

e) The State Drug Controller.

f) The Government Analyst.

Two or more State Governments can enter into an agreement for constitution of Joint State Councils or the Council of one State can serve the needs of the other.

Registration of Pharmacists

The State Government has under the provisions of the Pharmacy Act to get a register of the State Pharmacists prepared and it is the State Pharmacy Council which has to maintain the register. The register shall contain the name and residential address of pharmacist, the date of his first admission to the register, qualifications for registration, his profession, address, the name of his employer and prescribed particulars.

The name of pharmacist can be removed from the register if the Registrar is satisfied that (i) the name has been entered by error or on account of misrepresentation or suppression of a material fact, or (ii) the pharmacist has been convicted of any offence or quality of any infamous conduct, or (iii) the pharmacist employed a person for the purpose of his business of a pharmacy who has been convicted of an offence or has been guilty of any infamous conduct.

Penalty for False Claims

If any person falsely claims to be a registered pharmacist and uses such words with his name as to suggest that his name is so entered he makes himself liable to conviction and fine upto 500 rupees and on any subsequent conviction for such offence he may be imprisoned upto six months and also fined.

3. THE DRUGS AND MAGIC REMEDIES (Objectionable Advertisement) ACT, 1954

The Drugs and Magic Remedies Act prohibits a person from taking part in the publication of any advertisement referring to any drug which suggests the use of the drug for (a) the procurement of miscarriage in women or prevention of conception in women and (b) the maintenance or improvement of the capacity of the human being for sexual pleasure; (c) the correction of menstrual disorder in women (d) the diagnosis, cure, mitigation, treatment or prevention of any general disease.

Whoever contravenes the provisions of this **Act shall, on** conviction be punishable with imprisonment which may extend to six **months**, with or without fine. In case of subsequent convictions the imprisonment **can** be extended to one year.

4. THE NARCOTIC DRUGS & PSYCHOTROPIC SUBSTANCES ACT, 1985

This is an Act to consolidate and amend the law relating to Narcotic Drugs, to make stringent provisions for the control and regulation of operations relating to Narcotic Drugs and Psychotropic Substances and for matters concerned therewith.

The Narcotic Drugs and Psychotropic Substances Act, 1985 provides deterrent punishment for those who contravene the provisions of the Act by engaging themselves in manufacture, sale, purchase, transport etc. of narcotic drugs and psychotropic substances like Coca, Opium, Cannabis and Psychotropic substances. The punishment provided is rigorous imprisonment for a term which shall not be less than 10 years but which may extend to 20 years and shall also be liable to fine which shall not be less than 1 lakh rupees but which may extend to 2 lakh rupees, where a contravention relates to 'ganja' or the cultivation of cannabis plant, the punishment prescribed is rigorous imprisonment for a term which may extend to 5 years and shall also be liable to fine which may extend to fifty thousand rupees, where contraventions relates to Cannabis other than ganja, the punishment is rigorous imprisonment for ten years, but which may extend to twenty years and fine up to 1 lakh rupees which may extend to 2 lakh rupees. In case of repeat offences, the Act provides for every subsequent offence, rigorous imprisonment for a term which shall not be less than 15 years but which may extend to 30 years and shall also be liable to

fine which shall not be less than 1 lakh 50 thousand rupees, but which extend to 3 lakh rupees.

5. THE POISONS ACT, 1919

The object of this Act is to consolidate the laws regulating the importation, possession, and sale of poisons.

The Government can also fix fees for such licence and decide about the class of persons to whom the licences may be granted, the class of persons to whom alone the poison may be sold, the maximum quantity which may be sold, the registers that vendor should maintain, the way the poisons are to be kept in custody and the method of inspection of the poison.

Importation of Poison without a permit is prohibited.

The following substances are deemed to be poisonous:

Aconite, Aconine, Alkaloids, Arsenic, Atropine, Belladonna, Pantharidi Chloral Hydrate, Coca, Corrosive Sublimate, Cyanide of Potassium, Diamorphine (also known as Heroin), Diethyl Barbituric Acid, Digitalis Digitalin, Ecogonine, Ergot of Rye, Lead, Nux Vomica, Arychnine Morphine, Pictrotoxin, Purssic Acid, Savin and its oils, tramonium, Strophanthus, Strophanthin, Tartar Emetic, Tetraethyl Lead.

LEGISLATION FOR TOBACCO CONTROL

Laws generally reflect societal attitudes. Therefore, legislative action for tobacco control would suggest societal acceptance of the need to promote positive health. Behaviour change among addicts is a difficult process and quite often disincentives for a majority of tobacco users as well as discourage starters.

In India, Cigarette (Regulation of Production, Supply and Distribution) Act, 1975 made it mandatory for all manufactures or person trading in cigarettes to display a statutory warning "Cigarette smoking is injurious to health" on all cartons or packets of cigarettes and cigarette advertisements.

The limitations of the current warning labels need improvements in the areas of scope, languages, rotation of message, colour, size and position, pictogram, visibility and legibility. Since there was neither proper implementation and monitoring of the regulations on warning nor any actions

taken on the defaulters, the Cigarette Act and the Rules need to be enforced seriously. Even though beedi manufacture is a cottage industry, the small number of industries which make beedis can easily be brought under the legislation.

Recently, the scope of the Prevention of Food Adulteration Act has been expanded to cover chewing tobacco, pan masala and supari. These products need to bear the statutory warning that "Chewing of tobacco is injurious to health", "Chewing of pan masala may be injurious to health", on all respective packages. The rules apply to advertisements also.

The growing need to control the tobacco epidemic was considered by the Committee of Secretaries in 1986. A draft comprehensive legislation was subsequently initiated by the Ministry of Health and Family Welfare, after getting the empowerment of the Parliament by three states (which is a constitutional necessity). It envisages strict measures, on several fronts, to control tobacco use.

While the work on the comprehensive legislation was on, an administrative order prohibiting smoking in selected public places like hospitals, dispensaries, educational institutions, conference rooms, domestic air flights, air conditioned coaches in trains, suburban trains and air-conditioned buses, was issued in 1990. While the prohibition was successful in certain areas like domestic air flights, implementation of the order in other areas, is extremely limited. In 1995, the issue of rules and regulations framed under the Cigarette Act was considered by a Parliamentary Committee on Subordinate Legislation, chaired by Sh. Amal Datta, MP. After consulting evidences provided by various government officials, persons concerned with tobacco promotion and anti-tobacco activists; the committee felt the need for strict measures and provided various suggestions for control of tobacco. But the latest development is not very encouraging as the Advertisement Standards Council of India (ASCI) has withdrawn in 1998 its advertising code formulated for the tobacco industry due to the inability of prominent members of the tobacco industry to follow the code.

The ASCI code for tobacco advertising had banned any testimonial or recommendation by a well known personality.(Many tobacco majors had been using endorsements from cricketers and film personalities either indirectly or directly). Further, the ASCI code said that the advertisements should not imply that smoking was associated with success in sports or in any sphere of life.

Surrogate advertising was also not allowed. The tobacco code spanned the entire gamut of beedis, cigars, gutkha etc. and covered all mediums of advertising, including outdoor. Tobacco Institute of India has informed ASCI that it had developed its own code on advertising and marketing and would prefer to follow it instead. The Council regrets that even after several discussions over the last two years with the industry and various consumer organisation and a study of the tobacco codes of several countries, the Council has not been able to arrive at code that is acceptable to the industry".

Review Questions:

1. Explain the items prohibited by import under the Drugs and Cosmetics Act.
2. What are the salient features of Drugs and Cosmetics Act of 1982 as amended thereon?
3. State the salient points of Norcotic Drugs Psychotrophic Substances Act, 1985.
4. State the relevant provisions of Legislation of Tobacco Control.

* * *

UNIT – 4

LABOUR LAWS APPLICABLE TO HOSPITALS-I

Hospital organisation is most complex and intricate more so in case of its management. The intensity of this aspect has been increased because of dealing with qualified, semi skilled and non-qualified or skilled, semi skilled and unskilled personnel. This task has become more delicate, because of one has to keep a pace with existing labour laws while dealing with all these different personnel. Some of these Acts are:

1. Industrial Employment (Standing Orders) Act, 1946
2. Shops and Establishment Act, 1954
3. Employees' State Insurance Act, 1948
4. Employees' Provident Fund Act, 1952
5. Payment of Gratuity Act, 1972
6. Maternity Benefit Act, 1961
7. Minimum Wages Act, 1948
8. Payment of Wages Act, 1936
9. Payment of Bonus Act, 1965
10. Factories Act, 1948
11. Workers Compensation Act, 1923
12. Trade Union Act, 1926
13. Industrial Disputes Act, 1947

INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946

The Act was passed in 1946 and its main object is to require the employers in industrial establishments, to which the Act applies, to define formally the terms and conditions of employment in their establishments. In imposing this obligation on the employers, the Act intends that the terms and conditions of industrial employment should be well-defined and should be known to the employees before they accept the employment. Anouher object of

the Act is to introduce uniformity of terms and conditions of employment in respect of employees belonging to the same category and discharging the same or similar work under an industrial establishment.

The Act requires the employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to employees employed by them.

The objects of the Act are:

(i) To enforce uniformity in the conditions of services under different employers in different industrial establishments.

(ii) The employer, once having made the conditions of employment known to his employed workmen cannot change them to their detriment or to the prejudice of their rights and interests.

(iii) With the express or written conditions of employment, it is open for the prospective worker to accept them and join the industrial establishment.

(iv) For maintaining industrial peace and continued productivity, the significance of the express written conditions of employment cannot be minimised or exaggerated.

Conditions of Employment and Standing Orders:

Conditions of employment include, inter alia, the conditions of recruitment, discharge, disciplinary action, holidays of the workmen employed in industrial establishments, etc. The object of defining the conditions of employment is to avoid disputes arising from uncertainty and vagueness in the terms of employment. The rules made in this regard are known as standing orders.

DEFINITIONS

Appellate Authority [Sec.2(a)]

It means an authority appointed by the appropriate Government by notification in the Official Gazette to exercise the functions of an appellate authority under the Act. The area of the appellate authority may be specified in the notification.

Appropriate Government [Sec.2(b)]

It means in respect of industrial establishments under the control of the Central Government or a railway administration or in a major port, mine or oilfield, the Central Government. In all other cases, appropriate Government means the State Government.

Certifying Officer [Sec.2(c)]

Certifying Officer means a Labour Commissioner, or a Regional Labour Commissioner, and includes any other offer appointed by the appropriate Government, by notification in the Official Gazette, to perform all or any of the functions of a Certifying Officer under the Act.

Employer [Sec.2(d)]

"Employer" means the owner of an industrial establishment to which this Act applies and also includes the following persons:

- A manager so named under Section 7(1)(f) of the Factories Act, 1948.
- The head of the department or any authority appointed by the government in any industrial establishment under its control.
- Any person responsible to the owner for the supervision and control of any other industrial establishment which is not under the control of government.

Standing Orders [Sec.2(q)]

The term 'Standing Orders' means rules relating to matters set out in the Schedule to the Act.

Matters to be provided in Standing Orders

(1) Classification of workmen, e.g. whether permanent, temporary, apprentices, probationers, or badlis.

(2) Manner of intimating to workmen periods and hours of work, holidays, pay days and wage rates.

(3) Shift working.

(4) Attendance and late coming.

(5) Conditions of, procedure in applying for, and the authority which may grant leave and holidays.

(6) Requirement to enter premises by certain gates, and liability to search.

(7) Closing and reopening of sections of the industrial establishment, temporary stoppages of work and the rights and liabilities of the employer and workmen arising therefrom.

(8) Termination of employment, and the notice thereof to be given by employer and workmen.

(9) Suspension or dismissal for misconduct and acts or omissions which constitute misconduct.

(10) Means of redress for workmen against unfair treatment.

(11) Any other matter which may be prescribed.

Additional matters to be provided in Standing Orders relating to all industrial establishments:

(i) Service record-matters relating to service card, token tickets, certification of services, change of residential address of workers and record of age.

(ii) Confirmation.

(iii) Age of retirement.

(iv) Transfer.

(v) Medical aid in case of accidents.

(vi) Medical examination.

(vii) Secrecy.

(viii) Exclusive services.

(ix) Any other matter which may be prescribed.

Recently, in a significant judgement on gender justice, the Supreme Court has ordered that employers should include strict prohibitions on sexual harassment of employees and appropriate penalties against the offending employees in Standing Orders.

Review Questions:

1. Discuss the need for having Standing Orders in the Industrial establishments.
2. What are the matters to be provided for in the Standing Orders?
3. How are Standing Orders made known to workmen employed in an industrial establishment?

* * *

THE SHOPS AND ESTABLISHMENTS ACT, 1954

The working conditions of the employees in shops and commercial establishments in India are governed largely by Acts passed by the different State Governments for the respective areas under their jurisdiction and the Rules framed by each State under those Acts. These Acts regulate interalia the daily and weekly hours of work, rest intervals, opening and closing hours of establishments, payment of wages, overtime pay, holidays with pay, annual leave, employment of females, children and young persons etc. These Acts apply in the first instance to shops, commercial establishments, restaurants, hotels and places of amusements in certain notified areas. The State Governments have the power to extend the application of such Acts to such other areas or to such other categories of undertakings in such areas as they may consider necessary.

The main provisions of the Act relate to:

i) the regulation of hours of work

ii) payment of wages

iii) leave and holidays

iv) terms of service and other conditions of work of persons employed in shops, commercial establishments, establishments for public entertainment or amusement and other establishments

v) employment of children and young persons.

DEFINITIONS

Adult [Sec.2(1)]: It means a person who has completed his eighteenth year of age.

Close day [Sec.2(3)]: It means the day of the week on which a shop or commercial establishment remains closed.

Closing hour [Sec.2(4)]: It means the hour at which a shop or commercial establishment closes.

Commercial Establishment [Sec.2(5)]: It means any premises wherein any trade, business or profession or any work in connection with, or incidental or ancillary thereto, is carried on. It includes a society registered under the Societies Registration Act, 1860 and Charitable or other Trust, whether registered or not, which carries on any business, trade or profession or work in connection with or incidental or ancillary thereto, journalistic and printing establishments, contractors' and auditors' establishments, quarries and mines not governed by the Mines Act, 1952. It also includes educational or other institutions run for private gain and premises in which business of banking, insurance, stocks and shares, brokerage or produce exchange is carried on. It does not include a shop or a factory registered under the Factories Act, 1948 or theatres, cinemas, restaurants, eating houses, residential hotels, clubs or other places of public amusement or entertainment.

Day [Sec.2(6)]: It means a period of twenty-four hours beginning at mid-night. But in the case of an employee whose hours of work extend beyond mid-night, it means the period of twenty-four hours beginning when such employment commences irrespective of mid-night.

Employee[Sec.2(7)]: It means a person wholly or principally employed, whether directly or otherwise, and whether for wages (payable on permanent, periodical, contract, piece-rate or commission basis) or other consideration, about the business of an establishment. It includes an apprentice and any person employed in a factory but not governed by the Factories Act, 1948. It also includes a person discharged or dismissed whose claims have not been settled in accordance with the Shops and Establishments Act.

Employer [Sec.2(8)]: It means the owner of any establishment about the business of which persons are employed, and where the business of such

establishment is not directly managed by the owner, it means the manager, agent or representative of such owner in the said business.

Establishment [Sec.2(9)]: It means shop, a commercial establishment, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment to which this Act applies and includes such other establishment as Government may, by notification in the Official Gazette, declare to be an establishment for the purposes of this Act.

Holiday [Sec.2(11)]: It means a day on which an establishment the time during which the persons employed are at the disposal of the employer, exclusive of any interval allowed for rest and meals.

Occupier [Sec.2(17)]: It means a person owning or having charge or control of the establishment and includes the manager, agent or representative of such occupier.

Shop [Sec.2(17)]: It means any premises where goods are sold either by retail or wholesale or where services are rendered to customers. It includes an office, a store-room, godown, warehouse or workhouse or work place, whether in the same premises or otherwise, used in connection with such trade or business but does not include a factory or commercial establishment.

Wages [Sec.2(30)]: It means wages as defined in Section 2 of the Minimum Wages Act, 1948.

Week [Sec.2(31)]: It means a period of seven days beginning at midnight on Saturday.

Year [Sec.2(33)]: It means the calendar year.

Young Person [Sec.2(34)]: It means a person who is not a child and has not completed his eighteenth year of age.

Hours of Work (Sec.8):

An adult cannot be employed or allowed to work about the business of an establishment for more than nine hours on any day or 48 hours in any week.

The occupier must fix the daily period of work accordingly. But during any period of stock-taking or the making of accounts or any other purpose, as may be prescribed, an adult employee may be allowed or required to work for more than the hours fixed, but not exceeding 54 hours in any week subject to the

conditions that the aggregate hours so worked shall not exceed 150 hours in a year. Advance intimation of atleast three days in this respect has to be given to the Chief Inspector. Any person employed on overtime is entitled to remuneration calculated by the hour.

Interval for Rest and Meals (Sec.10)

The period of work of an adult employee in an establishment each day must be so fixed that no period of continuous work exceeds five hours. Further no employee must be required or allowed to work for more than five hours before he has had an interval for rest and meals of at least half an hour. The time for such interval must be fixed by the employer and intimated to the Chief Inspector a week before such fixation and must remain operative for a period of not less than three months.

Spreadover (Sec.11)

The periods of work on any day of an adult person must be so arranged that inclusive of his interval for rest or meals, they do not spread over for more than ten and a half hours in any commercial establishment or for more than twelve hours in any shop.

Close day (Sec.16)

Every shop and commercial establishment must remain closed on a close day. In addition to the close day every shop and commercial establishment has to remain closed on three of the National Holidays each year as the Government may, by notification, specify.

The Chief Commissioner has specified the following three to be the national holidays:

1) January, 26 – Republic Day
2) August, 15 – Independence Day
3) October, 2 – Gandhi Jayanthi

Weekly holiday (Sec.17)

Every employee must be allowed atleast twenty-four consecutive hours of rest (weekly holiday) in every week. This period can, in the case of shops and commercial establishments required by the Act to observe a weekly holiday, be on the close day.

Prohibition on Employment of Children (Sec.12)

No child is allowed to work whether as an employee or otherwise in any establishment notwithstanding that such child is a member of the family of the employer.

Wages for the Holiday (Section 18)

No deduction shall be made from the wages of any employee on account of the close day in Section 16 or a holiday granted under Section 17 of the Act.

If an employee is employed on daily wage, he shall none-the-less be paid the daily wage for the holiday and where an employee is paid on piece rates, he shall receive the average of the wages received during the week.

Time and Conditions for Payment of Wages (Section 19)

(1) Every employer or his agent or the manager of any establishment shall fix periods in respect of which wages to the employee shall be payable and such person shall be responsible for the payment to persons employed by him of all wages required to be paid under this Act.

(2) No wage period so fixed, shall exceed one month.

(3) The wages of every employee in any shop or establishment shall be paid on a working day before the expiry of the seventh day of the last day of the wage period in respect of which the wages are payable.

(4) All wages shall be paid in cash.

(5) Where the employment of any person is terminated by or on behalf of the employer, the wages earned by him shall be paid before the expiry of the second working day after the day on which his employment is terminated.

Deduction which may be made from wages (Section 20)

(1) The wages of an employed person shall be paid to him without deduction of any kind except those specified in Sub-section (2).

(2) Deduction from the wages of an employee shall be of one or more of the following kinds namely:

i) Fines

ii) Deduction for absence from duty

iii) Deductions for damage to or loss of goods or for loss of money entrusted to the employed person and this loss due to his neglect.

iv) Deductions for house accommodation supplied by the employer.

v) Deductions for such amenities and services supplied by the employer.

vi) Deductions for the recovery of advances.

vii) Deductions of income tax

viii) Deductions required to be made by order of the court.

ix) Deductions of provident fund.

x) Deductions for insurance.

Leave (Section 22)

1. ***Privilege Leave:***

   i) Every employee is entitled to privilege leave as per the provisions made in the Act.

   ii) Leave can be accumulated upto three times of the leave entitled after 12 months employment.

   iii) Where leave is either refused or the worker is discharged before he avails the leave at his credit, the employer shall pay full wages for the period of leave due.

   iv) Wages for the leave period shall be calculated on the basis of average of the wages during the preceding three months including dearness allowance.

   v) Employee shall apply in writing 15 days in advance and the employer shall pass orders thereon not later than 7 days from the receipt of the application.

2. ***Sickness or Casual Leave:***

Every employee is entitled to sickness or casual leave for twelve days at the rate of one day for every month. Year means, calendar year, i.e. January to December

i) This leave can be granted on the ground of sickness or for private affairs.

ii) Balance of this leave cannot be carried over to the next year.

Wages during Leave (Section 23)

Every employee shall be paid for the period of his leave at a rate equivalent to the daily average of his wages for the days on which he actually worked during the preceding three months, exclusive of any earnings in respect of overtime but inclusive of dearness allowance.

Cleanliness, Lighting and Ventilation, Drinking Water etc. (Secs.25 & 26)

Section 25 lays down that the premises of every establishment shall be kept clean. Cleaning is to be carried out at such intervals and by such methods as may be prescribed.

Section 26 says the premises of every establishment shall be kept sufficiently lighted and ventilated during all working hours. Further, suitable arrangements shall be made for supply of drinking water to the employees.

Precautions against Fire etc. (Section 28)

Section 28 of the Act authorizes the Government to prescribe precautions against fire etc. The responsibility for taking precautions in clearly that of the occupier.

Employer to furnish Letter of Appointment to Employees (Section 34)

The employer is required to furnish every employee with a letter of appointment. It shall contain the following and such other particulars as may be prescribed, namely:

a) The name of the employer
b) The name, if any, and the postal address of the establishment
c) The name, father's name and the age of the employee
d) The hours of work
e) Date of appointment

Letter of appointment to employees

The letter of appointment to employees as required under Section 34 of the Act shall contain the following further particulars:

i) the rate of wages or salary,

ii) designation or nature of work for which employed,

iii) and other concessions or benefits, if any, that may be special to his appointment.

Notice of Dismissal (Section 30)

(1) No employer shall dispense with the services of an employee who has been in his continuous employment for not less than three months, without giving such persons at least one month's notice in writing or wages in lieu of such notice.

(2) No employee who has put in three months continuous service shall terminate his employment unless he has given to his employer a notice of atleast one month, in writing. In case he fails to give one month's notice he will be released from his employment on payment of the amount equal to one month's pay.

(3) The amount payable as compensation under this section shall be in addition to any fine payable under Section 40.

(4) No person who has been awarded compensation under this section shall be at liberty to bring a civil suit in respect of the same claim.

Review Questions:

1. Define (a) Commercial Establishment, (b) Shop, (c) Spreadover
2. What are the main objectives of Shops and Establishment Act, 1954?
3. What records should be maintained under the Shops and Establishment Act?
4. Explain the provisions of the Act with regard to leave and dismissals.

* * *

EMPLOYEES' STATE INSURANCE ACT, 1948

The Employees' State Insurance Act is a piece of social security legislation enacted in 1948. Its object is to introduce social insurance by providing for certain benefits to employees in case of sickness, maternity and employment injury and for certain other matters in relation thereto.

The Act shall apply to all factories. The Act has been extended by many State Governments to shops, hotels, restaurants, cinemas, including preview theatres, newspaper establishments, road transport undertakings etc. employing 20 or more persons.

DEFINITIONS

Contribution [Sec.2(4)]

It means the sum of money payable to the Employees' State Insurance Corporation by the principal employer in respect of an employee and includes any amount payable by or on behalf of the employee in accordance with the provisions of this Act.

Contribution Period [Sec.2(5)]

It means such period as may be specified in the regulations. It must not exceed 6 consecutive months. However, in the case of the first contribution period a longer period may be specified by or under the regulations.

Dependent [Sec.2(6A)]

"Dependent" means any of the following relatives of a deceased insured person namely:

(1) a widow, a minor legitimate son, an unmarried legitimate daughter, or adopted daughter;

a widowed mother.

(2) if wholly dependent on the earnings cf the insured person at the time of his death, a legitimate or adopted son or a daughter who has attained the age of 18 years and is infirm.

(3) if wholly or in part dependent on the earnings of the insured person at the time of his death –

- A parent other than a widowed mother,
- A minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or illegitimate if married and a minor or if widowed and a minor,
- A minor brother or an unmarried sister or a widowed sister if a minor,
- A widowed daughter-in-law,
- A minor child of a pre-deceased son
- A minor child of a pre-deceased daughter where no parent of the child is alive, or
- A paternal grandparent if no parent of the insured person is alive.

Family [Sec.2(11)]

'Family' means all or any of the following relatives of an insured person, namely –

- a spouse;
- a minor legitimate or adopted child dependent upon the insured person;
- a child who is wholly dependent on the earnings of the insured person and who is (a) receiving education, till he or she attains the age of 21 years, (b) an unmarried daughter;
- a child who is infirm by reason of any physical or mental abnormality or injury and is wholly dependent on the earnings of the insured person, so long as the infirmity continues;
- dependent parents.

Insured Person [Sec.2(14)]

It means a person who is or was an employee in respect of whom contributions are or were payable under the Act and who is, by reason thereof, entitled to any of the benefits provided by the Act.

Miscarriage [Sec.2(14-B)]

It means expulsion of the contents of a pregnant uterus at any period prior to or during the 26 weeks of pregnancy but does not include any miscarriage, the causing of which is punishable under the Indian Penal Code, 1860.

Sickness [Sec.2(20)]

It means a condition which requires medical treatment and attendance and necessitates abstention from work on medical grounds.

EMPLOYEES' STATE INSURANCE CORPORATION

Section 3 of this Act provides for the establishment of Employees' State Insurance Corporation by the Central Government for administration of the Employees' State Insurance Scheme in accordance with the provisions of the Act.

Powers and duties of the Corporation

Section 19 empowers the Corporation, to promote (in addition to the scheme of benefits specified in the Act), measures for the improvement of the health and welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured and incur in respect of such measures expenditure from the funds of the Corporation within such limits as may be prescribed by the Central Government.

EMPLOYEES' STATE INSURANCE FUND (Sec.26)

Section 26 of the Act provides that all contributions paid under this Act and all other moneys received on behalf of the Corporation shall be paid into a Fund called the Employees' State Insurance Fund which shall be held and administered by the Corporation for the purposes of this Act. The Corporation may accept grants, donations and gifts from the Central or State Government, local authority, or any individual or body whether incorporated or not, for all or any of the purposes of the Act.

Purposes for which E.S.I. Fund may be Expended (Sec.28)

The E.S.I. Fund shall be expended only for the following purposes, namely:

(1) payment of benefits and provision of medical treatment and attendance to insured persons and their families and defraying the charges and costs in connection therewith;

(2) payment of fees and allowances to members of the E.S.I. Corporation, the Standing Committee and Medical Benefit Council, the Regional Boards, Local Committees and Regional and Local Medical Benefit Councils;

(3) payment of salaries, leave and joining time allowances, traveling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident or other benefit fund of officers and servants of the E.S.I. Corporation and meeting the expenditure in respect of offices and other services set up for the purpose of giving effect to the provisions of the Act;

(4) establishment and maintenance of hospitals, dispensaries and other institutions for the benefit of insured persons and their families;

(5) payment of contributions to any State Government, local authority or any private body or individual, towards the cost of medical treatment and attendance provided to insured persons and their families;

(6) defraying the cost of auditing the accounts of the E.S.I. Corporation and of the valuation of its assets and liabilities;

(7) defraying the cost (including all expenses) of the Employees' Insurance Court set up under the Act;

(8) payment of any sums under any contract entered into for the purposes of the Act by the E.S.I. Corporation or the Standing Committee or by an officer duly authorised by the E.S.I. Corporation or the Standing Committee in that behalf;

(9) payment of sums under any decree, order or award of any Court or Tribunal against the E.S.I. Corporation or any of its officers or servants for any act done in execution of his duty or under a compromise or settlement of any suit or other legal proceeding or claim instituted or made against the E.S.I. Corporation.

(10) defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under the Act;

(11) defraying expenditure, within the limits prescribed, on measures for the improvement of the health and welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured; and

(12) such other purposes as may be authorised by the E.S.I. Corporation with the previous approval of the Central Government.

CONTRIBUTIONS (Chapter IV Secs.38 to 45-B)

Subject to the provisions of the Act, all the employees in factories and establishments to which the Act applies shall be insured (Sec.38). In accordance with the provisions of the Act, both the employers and employees have to pay their contributions. The contribution payable by an employee is known as *employee's contribution* and the contribution payable by an employer is known as *employer's contribution*. These contributions are to be paid to the E.S.I. Corporation [Sec.39(1)]. The contributions shall be paid at such rates as may be prescribed.

Method of Calculation

Schedule I to the Act lays down the method of calculation of the employees' and the employers' contribution. According to it the amount of contribution for a wage-period shall be paid at a fixed percentage of wages. The present rates of contribution are 4.75 percent and 1.75 percent of workers wages by employers and employees respectively.

Principal Employer to pay Contributions in the first instance

According to Sec.40 of the act, it is incumbent upon the principal employer to pay in respect of every employee whether directly employed by him or by or through an immediate employer, both the employer's contributions and the employee's contribution. However, he can recover from the employee (not being an exempted employee) the employee's contribution by deduction from his wages and not otherwise.

BENEFITS (Chapter V Secs.46 to 73)

The Act provides for 6 types of benefits to the insured persons, their dependants or certain other persons who are entitled. These benefits are as follows:

1. Sickness benefit
2. Maternity benefit
3. Disablement benefit
4. Dependant's benefit
5. Medical benefit
6. Funeral expenses

All these benefits except the medical benefit are monetary benefits. The rules regarding these benefits are contained in Secs.46 to 58 and the First Schedule to the Act.

1. Sickness Benefit [Secs.46 (1) (a), 47 to 49]

An insured person shall be entitled to sickness benefit only if his sickness is certified by a duly appointed medical practitioner. The qualification of a person to claim sickness benefit, the conditions subject to which such benefit may be given, the rates and period thereof shall be such as may be prescribed by the Central Government.

The insured person shall not, however, be entitled to sickness benefit for an initial waiting period of 2 days. But if the spell of sickness recurs within 15 days he shall be entitled to recover the benefit even for the first 2 days in the second or subsequent spell. The sickness benefit is also not to be paid to any person for more than 56 days in any 2 consecutive benefit periods.

2. Maternity Benefit [Secs.46 (1) (b) and 50]

An insured woman shall be entitled to maternity benefit in case of (a) confinement, or (b) miscarriage, or (c) sickness arising out of pregnancy, confinement, premature birth of a child or miscarriage. Before an insured woman is entitled to maternity benefit she must be certified to be eligible for such payment by an authority specified in this behalf. [Sec.46 (1) (b)].

To obtain maternity benefit, the insured woman must get certificate of pregnancy, of the expected date of confinement and of actual confinement and send them to the Local Office to which she is attached.

An insured woman shall be entitled to maternity benefit for an additional period not exceeding 1 month for all days she does not work for remuneration in case of (a) sickness arising out of pregnancy, (b) confinement, (c) premature

birth of child, or (d) miscarriage. But the following conditions must be fulfilled before she can claim maternity benefit:

- She must be qualified to claim this amount under Sec.50(1).
- She must produce such proof as may be required under the regulations in support of her claim [Sec.50(4)].

3. Disablement Benefit [Secs.46 (1) (c), 51,51-A to 51-D, 52-A, 53 to 55]

Disablement benefit shall be payable to an insured person suffering from disablement as a result of an *employment injury* sustained as an employee if he is certified to be eligible for such payment by an authority specified in this behalf. [Sec.46 (1) (c)].

4. Dependant's Benefit [Secs.46 (1) (d), 52 to 55-A]

If an insured person dies as a result of an employment injury sustained as an employee, his dependants who are entitled to compensation under the Act, shall be entitled to periodical payments referred to as dependant's benefit [Sec.46 (1) (d)]. Whether or not he was in receipt of any periodical payment or temporary disablement in respect of the injury, dependant's benefit shall be payable to his dependants at such rates and for such periods and subject to such conditions as may be prescribed by the Central Government. Till such rates, periods and conditions are prescribed by the Central Government, provisions of Schedule I will continue to apply.

In case the insured person dies without leaving behind him the dependants as aforesaid, the dependant's benefit shall be paid to the other dependants of the deceased at such rates and for such periods and subject to such conditions as may be prescribed by the Central Government.

5. Medical Benefit [Secs.46 (1) (e), 46 (2), and 56 to 59]

The medical benefit may be given either in the form of out-patient treatment and attendance in a hospital or dispensary, clinic or other institution or by visits to the home of the insured person or treatment as in-patient in a hospital or other institution.

6. Funeral Expenses [Secs.46 (1) (f)]

In case the insured person dies, the expenditure on his funeral, known as 'funeral expense', shall be payable to the eldest surviving member of the family.

Where the deceased person did not have a family or was not living with his family at the time of his death, the funeral expense shall be payable to the person who actually incurs the expenditure on the funeral of the deceased insured person.

Review Questions :

1. Define the following terms as used in the E.S.I. Act:

   (a) Employment Injury, (b) Contribution, (c) Confinement, (d) Family

2. What is Employees' State Insurance Fund? What are the purposes for which the fund may be expended?

3. What are the different types of benefits provided by the E.S.I. Act?

4. How does E.S.I. Act provide for adjudication of disputes and claims?

* * *

EMPLOYEES' PROVIDENT FUND ACT, 1952

The Employees Provident Funds (and Miscellaneous Provisions) Act came into force in November, 1952. The object of the act is to provide for the institution of provident funds and family pension and deposit-linked insurance schemes for employees in factories and other establishments.

DEFINITIONS

Contribution [Sec.2(c)]

It means a contribution payable in respect of a member, under the Employees' Provident Fund Scheme or the contribution payable in respect of an employee to whom the Employees' Deposit-linked Insurance Scheme applies.

Pension Fund [Sec.2(kA)]

"Pension Fund" Means the Employees' Pension Fund established under sub-section (2) of Section 6A.

Pension Scheme [Sec.2(kB)]

"Pension Scheme" means the Employees' Pension Scheme framed under sub-section (1) of Section 6A.

Scheme [Sec.2(l)]

It means the Employees' Provident Fund Scheme framed under Section 5.

Superannuation [Sec.2(ll)]

"Superannuation", in relation to an employee, who is the member of the Pension Scheme, means the attainment, by the said employee, of the age of 58 years.

SCHEMES UNDER THE ACT

In exercise of the powers conferred under the Act, the Central Government has framed the following three schemes:

(A) The Employees' Provident Fund Schemes, 1952

(B) The Employees' Pension Scheme, 1995; and

(C) The Employees' Deposit-Linked Insurance Scheme; 1976.

EMPLOYEES' PROVIDENT FUND SCHEMES

Every employee employed in or in connection with the work of a factory or other establishment to which this scheme applies, other than an excluded employee, shall be entitled and required to become a member of the fund from the date of joining the factory or establishment.

Contributions

As per Section 6, the contribution which shall be paid by the employer to the Fund shall be 10%, of the basic wages, dearness allowance and retaining allowance, if any, for the time being payable to each of the employees whether employed by him directly or through a contractor and the employee's contribution shall be equal to the contribution payable to the employer. Employees, if they desire, may make contribution exceeding the prescribed rate but subject to the condition that employer shall not be under any obligation to contribute over and above the contribution payable as prescribed by the Government from time to time under the Act.

Advances/ Withdrawals

Advances from the Provident Fund can be taken for the following purposes subject to conditions laid down in the relevant paras of the Employees' Provident Fund Scheme:

(1) Non-refundable advance for payment of premia towards a policy or policies of Life Insurance of a member;

(2) Withdrawal for purchasing a dwelling house or flat or for construction of a dwelling house including the acquisition of a suitable site for the purpose, or for completing/ continuing the construction of a dwelling house, already commenced by the member or the spouse and an additional advance for additions, alteration or substantial improvement necessary to the dwelling house;

(3) Non-refundable advance to members due to temporary closure of any factory or establishment for more than 15 days, for reasons other than a strike or due to non-receipt of wages for 2 months or more, and refundable advance due to closure of the factory or establishment for more than 6 months;

(4)

i) Non-refundable in case of:

(a) Hospitalization lasting one month or more, or

(b) Major surgical operation in a hospital, or

(c) Suffering from T.B, Leprosy, Paralysis, Cancer, Mental derangement or heart ailment, for the treatment of which leave has been granted by the employer.

ii) Non-refundable advance for the treatment of a member of his family, who has been hospitalized or requires hospitalization, for one month or more:

(a) For a major surgical operation; or

(b) For the treatment of T.B., Leprosy, Paralysis, Cancer, Mental derangement or heart ailment.

(5) Non-refundable advance for daughter/son's marriage, self-marriage, the marriage of sister/brother or for the post matriculation education of son or daughter;

(6) Non-refundable advance to members affected by cut in the supply of electricity;

(7) Non-refundable advance in case property is damaged by a calamity of exceptional nature such as floods, earthquakes or riots;

(8) Withdrawals for repayment of loans in special cases; and

(9) Non-refundable advance to physically handicapped members for purchasing an equipment to minimise the hardship on account of handicap.

Final Withdrawal

Full accumulations with interest thereon are refunded in the event of death, permanent disability, superannuation, retrenchment or migration from India for permanent settlement abroad/taking employment abroad, voluntary retirement, certain discharges from employment under Industrial Disputes Act, 1947, transfer to an establishment/factory not covered under the Act.

In other cases, with permission of commissioner or any subordinate officer to him, a member is allowed to draw full amount when he ceases to be in employment and has not been employed in any establishment to which the Act applies for a continuous period of atleast 2 months. This requirement of 2 months waiting period shall not apply in cases of female members resigning from service for the purpose of getting married.

EMPLOYEES' PENSION SCHEME

The Employees' Pension Scheme is compulsory for all the persons who were members of the Family Pension Scheme,1971. It is also compulsory for the persons who become members of the provident Fund from 16.11.1995 i.e. the date of introduction of the Scheme. The PF subscribers who were not members of the Family Pension Scheme, have an option to join this Pension Scheme. The Scheme came into operation w.e.f. 16.11.1995, but the employees, including those covered under the Voluntary Retirement Scheme have an option to join the scheme w.e.f. 1.4.1993.

Minimum 10 years contributory service is required for entitlement to pension. Normal superannuation pension is payable on attaining the age of 58 years. Pension on a discounted rate is also payable on attaining the age of 50 years. Where pensionable service is less than 10 years, the member has an option to remain covered for pensionary benefits till 58 years of age or claim return of contribution/ withdrawal benefits.

The Scheme provides for payment of monthly pension in the following contingencies – (a) Superannuation on attaining the age of 58 years; (b) Retirement; Permanent total disablement; (d) Death during service; (e) Death after retirement/ superannuation/ permanent total disablement; (f) Children pension; and (g) Orphan pension.

The amount of monthly pension will vary from member to member depending upon his pensionable salary and pensionable service.

The formula for calculation of monthly member's pension is as under:

$$\text{Member's Pension} = \frac{\text{*Pensionable Salary} \times (\text{Pensionable Service} + 2)}{70}$$

To illustrate, if the contributory service is 33 years and **pensionable salary** is Rs.5,000 per month, the above formula operates as given below:

$$\text{Member's Pension} = \frac{\text{*Rs.5,000} \times (33 + 2)}{70} = \text{Rs.2,500 p.m.}$$

In case where the contributory service is less than 20 years but more than 10 years, monthly pension is required to be determined as if the member has rendered eligible service of 20 years. The amount so arrived shall be reduced at the rate of 3 per cent for every year by which the eligible service fails short of 20 years, subject to maximum reduction of 25 per cent.

EMPLOYEES' DEPOSIT-LINKED INSURANCE SCHEME

The Central Government has accordingly framed the Employees' Deposit-linked Insurance Scheme,1976. It came into force on the 1st August, 1976.

1. ***Application of the Scheme:*** The Employees' Deposit-Linked Insurance Scheme, 1976 is applicable to all factories/ establishments to which the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 applies.

2. ***Contributions to the Insurance Fund:*** The employees are not required to contribute to the Insurance Fund. The employers are required to pay contributions to the Insurance Fund at the rate of 1% of the total emoluments, i.e. basic wages, dearness allowance including, cash value of any food concession and retaining allowance, if any.

3. ***Administrative Expenses:*** The employers of all covered establishments are required to pay charges to the Insurance Fund, at the rate of 0.01% of the pay of the employee-members for meeting the administrative charges, subject to a minimum of Rs.2/- per month.

4. ***Nomination:*** The nomination made by a member under the Employee Provident Fund Scheme 1952 or in the exempted provident fund is treated as nomination under this scheme.

5. ***Payment of Assurance Benefit:*** In case of death of a member, an amount equal to the average balance in the account of the deceased during the preceding 12 months or period of membership, whichever is less shall be paid to the persons eligible to receive the amount or the Provident Fund accumulations.

DETERMINATION OF MONEYS DUE FROM EMPLOYERS

Section 7A vests the powers of determining the amount due from any employer under the provisions of this Act.

Any of the following amounts due from an employer in relation to an establishment to which any Employees' Provident Fund Scheme or Employees' Deposit-linked Insurance Scheme applies, may, if the amount is in arrear, be recovered in the manner specified in Secs.8-B to 8-G:

(a) Any contribution payable to the Employees' Provident Fund or, as the case may be, the Employees' Deposit-linked Insurance Fund; or

(b) damages recoverable under Sec.14-B;

(c) accumulations required to be transferred under Sec.15(2) or under Sec.17(5); or

(d) any charges payable by the employer under any other provision of the Act or of any provision of the Employees' Provident Fund Scheme or the Employees' Deposit-linked Insurance Scheme.

Similarly, any of the following amounts due from an employer in relation to an exempted establishment may, if the amount is in arrear, be recovered in the manner specified in Secs.8-B to 8-G:

(a) damages recoverable under Sec.14-B, or

(b) any charges payable by the employer to the appropriate Government under any provision of the Act or under any of the conditions specified under Sec.17, or

(c) the contribution payable by the employer towards the Employees' Family Pension Scheme or the Employees' Deposit-linked Insurance Scheme under the said Sec.17 [Sec.8(b)].

MODES OF RECOVERY

Issue of Certificate to the Recovery Officer (Sec.8-B)

Where any amount is in arrear under Sec.8, the authorised officer may issue to the Recovery Officer a certificate under his signature specifying the amount of arrears. The Recovery Officer, on receipt of such certificate, shall proceed to recover the amount specified therein from the establishment or, as the case may be, the employer by one or more of the modes mentioned below:

(a) attachment and sale of the movable or immovable property of the establishment or, as the case may be, the employer;

(b) arrest of the employer and his detention in prison;

(c) appointing a receiver for the management of the movable or immovable properties of the establishment or, as the case may be, the employer [Sec.8-B(1)].

Other Modes of Recovery (Sec.8-F)

The Central Provident Fund Commissioner or any other officer authorised by the Central Board may recover the amount by any one or more of the modes provided in this Section [Sec.8-F(1)].

- Recovery from any person of amount due from him to employer who is in arrears
- By issue of Notice
- Application to the Court for Release of Money
- Recovery by Distraint and Sale of Movable Property

Review Questions:

1. Define the following terms as used in the EPF Act, 1952:
   (a) Controlled Industry, (b) Exempted employee, (c) Contributions
2. What is the scope and object of EPF Act?
3. What are the rules as to payment and recovery of contributions by an employer?
4. Explain the procedure for determination and recovery of moneys due from employers under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.
5. What is the mode of recovery of moneys due from employees under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952?

* * *

THE PAYMENT OF GRATUITY ACT, 1972

Gratuity is a kind of retirement benefit, like provident fund or pension. It is a payment which is intended to help an employee after his retirement whether the retirement is the result of the rules of superannuation or of some physical disability. The general principle underlying gratuity schemes is that by faithful

service over a long period the employee is entitled to claim a certain amount as retirement benefit. Thus it is earned by an employee as a reward for long and meritorious service. The Payment of Gratuity Act was passed in 1972.

DEFINITIONS

Completed Year of Service [Sec.2(b)]

It means continuous service for 1 year.

Continuous Service [Sec.2(c)]

'Continuous Service' means continuous service as defined in Sec.2-A. An employee shall said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), lay-off, strike, or lock-out, or cessation of work not due to any fault of the employee (Sec.2-A, Clause 1).

Where an employee (not being an employee employed in a seasonal establishment) is not in continuous service for any period of 1 year, he shall be deemed to be in continuous service under the employer for the said period of 1 year, if during the period of 12 calendar months preceding the date with reference to which calculation is to be made, he has actually worked under the employer for not less than –

- 190 days in the case of an employee below the ground in a mine or any establishment which works for less than 6 days in a week; and
- 240 days in any other case.

For determining the continuous service for any period of 6 months for the payment of gratuity, the number of days the employee should have actually worked should be half the number of days actually worked which constitute continuous service for a period of 1 year, i.e. 95 and 120 respectively.

Superannuation [New Sec.2(r)]

'Superannuation', in relation to an employee, means the attainment by the employee of such age as is fixed in the contract or conditions of service as the

age on the attainment of which the employee shall vacate the employment. The term 'superannuation' means retirement of an employee on attainment of a certain age.

PAYMENT AND FORFEITURE OF GRATUITY AND EXEMPTION

Payment of Gratuity (Sec.4)

Sec.4 deals with circumstances in which gratuity becomes payable to an employee and the cases when gratuity may be forfeited. The various provisions of Sec.4 are discussed below:

1. Gratuity Payable on Termination of Employment:

Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than 5 years –

(a) on his superannuation, or

Where an employee is appointed or continues in appointment after **the date of his** superannuation, he is entitled to gratuity for the fuli period of service and not merely up to the age of superannuation.

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease [Sec.4(1)].

2. Persons Entitled for Gratuity

Gratuity is payable to the employee himself. However, in the case of death of the employee, it shall be paid to his nominee and if no nomination has been made, to his heirs and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

3. Rate of Gratuity :

For every completed year of service or part thereof in excess of 6 months, the employer shall pay gratuity to an employee at the rate of 15 days wages based on the rate of wages last drawn by the employee concerned. In the case of a monthly rated employee 15 days, wages shall be calculated by dividing the

monthly rate of wages last drawn by him by 26 and multiplying the quotient by 15. The maximum amount of gratuity allowed under the Act is Rs.3,50,000/-.

Exemption under Sec.5

Sec.5 empowers the appropriate Government to exempt, by notification published in the Official Gazette, any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies, from the operation of the provisions of this Act if, in the opinion of the appropriate Government, employees in such establishment, etc. are in receipt of gratuity and pensionary benefits not less favourable than the benefits conferred under this Act.

4. Forfeiture of Gratuity :

The gratuity of an employee whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

The gratuity payable to an employee may be wholly or partially forfeited if the services of such employee have been terminated for –

(i) his riotous or disorderly conduct or any other act of violence on his part, or

(ii) any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

COMPULSORY INSURANCE AND PROTECTION OF GRATUITY

Compulsory Insurance (Sec.4-A)

According to Sec.4-A, every employer shall obtain an insurance for his liability for payment towards the gratuity under the Act from the Life Insurance Corporation or any other prescribed insurer with effect from such date as may be notified by the appropriate Government in this behalf.

Protection of Gratuity (Sec.13)

No gratuity payable under this Act and no gratuity payable to an employee employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop exempted under Sec.5 shall be liable to

attachment in execution of any decree or order of any civil, revenue or criminal court.

NOMINATION (Sec.6)

Each employee, as defined in the Act, is required to make a nomination within a specified period and in the specified manner. The rules relating to nomination are as follows:

(1) Nomination within 90/30 days: Each employee, who has completed 1 year of service, after the commencement of the Payment of Gratuity (Central) Rules, 1972, shall make within 90 days, and each employee who completes 1 year of service after the date of the commencement of these rules, within 30 days of completion of 1 year of service, a nomination.

(2) Distribution of amount of gratuity: An employee may, in his nomination, distribute the amount of gratuity payable to him under the Act amongst more than one nominee.

(3) Nomination in favour of family members: If an employee has a family at the time of making a nomination, the nomination shall be made in favour of one or more members of his family. To protect the interests of the family, it has been specifically provided that any nomination made by such employee in favour of a person, who is not a member of his family shall be void.

But if at the time of making a nomination the employee has no family, the nomination may be made in favour of any person. If the employee subsequently acquires a family, such nomination shall forthwith become invalid and the employee shall make, within 90 days, a fresh nomination in favour of one or more members of his family.

(4) Modification of nomination: A nomination may be modified by an employee at any time, after giving to his employer a written notice of his intention to do so.

(5) Death of nominee: If a nominee predeceases the employee, the interest of the nominee shall revert to the employee. The employee shall then make a fresh nomination in respect of such interest.

(6) Safe custody of nomination: Every nomination, fresh nomination or alteration of nomination, as the case may be, shall be sent by the

employee to his employer, who shall keep the same in his safe custody. Further, it shall take effect from the date of receipt of the same by the employer.

Application for Payment of Gratuity

An employee who is eligible for payment of gratuity under the Act, or any person authorised, in writing, to act on his behalf, shall send an application to the employer ordinarily within 30 days from the date the gratuity become payable for payment of such gratuity. But where the date of superannuation or retirement of an employee is known, the employee may apply to the employer before 30 days of the date of superannuation or retirement.

A nominee of an employee who is eligible for payment of gratuity in the case of death of the employee, shall apply to the employee ordinarily within 30 days from the date of the gratuity becomes payable to him. [Rule 7(2)].

Employer's Duty to Determine and Pay Gratuity

1. Sec.7(2) lays down that as soon as gratuity becomes payable the employer shall, whether the application has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the Controlling Authority, specifying the amount of gratuity so determined.

2. Section 7(3) of the Act says that the employer shall arrange to pay the amount of gratuity within thirty days from the date of its becoming payable to the person to whom it is payable.

3. Section 7(3A): If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at the rate of 10 per cent per annum.

Payment of Gratuity

The employer shall **arrange** to pay the amount of gratuity within 30 days from the date it becomes payable to the person to whom the gratuity is payable. This limit of 30 days for the payment of gratuity has been introduced by the Amendment Act of 1987.

Payment of Interest

This is a new provision made by the Amendment Act of 1987. If the amount of gratuity payable by the employer is not paid within a period of 30 days, the employer shall pay simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long term deposits.

The Government may specify such rate of interest by notification published in the Official Gazette. The interest shall be payable from the date on which the gratuity becomes payable to the date on which it is paid.

Recovery of Gratuity

If the amount of gratuity payable under the Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the latter shall make an application to the controlling authority.

The controlling authority shall issue a certificate for that amount to the Collector. The Collector shall recover the amount together with by notification published in the Official Gazette, specify, from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto.

Review Questions:

1. Define the following terms as used in the Payment of Gratuity Act, 1972:

   (a) Continuous Service, (b) Family

2. What are the rules relating to nomination of employee under the Payment of Gratuity Act?
3. What are the circumstances in which gratuity becomes payable to an employee under the Payment of Gratuity Act?
4. What are the rules as to determination and recovery of the amount of gratuity under the Payment of Gratuity Act?
5. Who is controlling authority under the Payment of Gratuity Act? What are his powers?

* * *

THE MATERNITY BENEFIT ACT, 1961

The Act was passed to regulate the employment of women in certain establishments for certain periods before and after child-birth and to provide for maternity benefit and certain other benefits (Preamble to the Act).

DEFINITIONS

Miscarriage [Sec. 3(f)]: It means expulation of the contents of a pregnant uterus at any period prior to or during the 26th week of pregnancy but does not include any miscarriage, the causing of which is punishable under the Indian Penal Code, 1860.

Woman [Sec. 3(o)]: 'Woman' means a woman employed, whether directly or thorough any agency, for wages in any establishment.

Employment of, or work by women, prohibited during certain periods (Sec.4)

Under Sec.4 of the Act, an employer is prohibited from knowingly employing any woman in any establishment during the 6 weeks immediately following the day of her delivery or her miscarriage [Sec.4(1)]. Likewise, a woman is prohibited from working in any establishment during this period of 6 weeks [Sec.4(2)]. Further, if a pregnant woman makes a request, she shall not be given any work of the following nature during the period specified in Sec.4(4):

(1) Any work which is of arduous nature.

(2) Any work which involves long hours of standing.

(3) Any work which in any way is likely to interfere with her pregnancy or the normal development of foetus or is likely to cause her miscarriage or otherwise adversely affect her health [Sec.4(3)].

The period referred to in Sec.4(3) shall be :

(a) the period of 1 month immediately preceding the period of 6 weeks before the date of her expected delivery;

(b) any period during the said period of 6 weeks for which the pregnant woman does not avail of the leave of absence under Sec.6 [Sec.4(4)].

Maternity Benefit

6 **Right to payment of maternity benefit** (Sec.5 as amended by the Amendment Act of 1988)

Subject to the provisions of the Act, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit. Maternity benefit is a payment to a woman at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery and any period immediately following that day [Sec.5(1)].

Average daily wage: It means the average of the woman's wages payable to her for the days on which she has worked during the period of 3 calendar months immediately preceding the date from which she absents herself on account of maternity, the minimum rate of wage fixed or revised under the Minimum Wages Act, 1948.

Conditions for Payment of Maternity Benefit

The following conditions must be fulfilled before maternity benefit becomes payable to a woman worker in an establishment:

(1) Work for not less than 80 days to have been put in. The woman must have actually worked in an establishment of the employer from whom she claims maternity benefit for a period of not less than 80 days in the 12 months immediately preceding the date of her expected delivery [Sec.5(2)].

(2) Maternity benefit for a maximum period of 12 weeks. The maximum period for which the woman shall be entitled to maternity benefit shall be 12 weeks of which not more than 6 weeks shall precede the date of her expected delivery. [Sec.5(3)].

(3) Death: If the woman dies during this period of 12 weeks, the maternity benefit shall be payable only for the days up to and including the day of her death [Proviso 1 to Sec.5(3)]. Where the woman having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for payment of maternity benefit for that entire period. If the child also dies during the said period, the employer shall be liable for

the payment of maternity benefit for the days up to and including the date of the death of the child (Proviso 2 to Sec.5(3)].

Notice of claim for maternity benefit and payment thereof (Sec.6)

Any woman employed in an establishment and entitled to maternity benefit under the provisions of the Act may give notice to her employer, stating that her maternity benefit and any other amount to which she may be entitled may be paid to her or to such person as she may nominate in the notice. The notice shall be in writing and in the prescribed form. It shall also state that she will not work in any establishment during the period for which she receives maternity benefit [Sec.6(1)]. In the case of a woman who is pregnant, the notice shall state the date from which she will be absent from work. This date will not be earlier than 6 weeks form the date of her expected delivery [Sec.6(2)]. If she has not given the notice when she was pregnant, she may give such notice as soon as possible after the delivery [Sec.6(3)].

On receipt of the notice, the employer shall permit the woman to be absent herself from the establishment during the period for which she receives the maternity benefit [Sec.6(4)].

Mode of Payment

Amount of maternity benefit for the period preceding the date of the expected delivery of the woman shall be paid in advance by the employer to her on production of such proof as may be prescribed that the woman is pregnant. The amount due for the subsequent period shall be paid by the employer to the woman within 48 hours of production of proof that the woman has delivered a child [Sec.6(5)].

Medical Bonus (Sec.8)

Every woman entitled to maternity benefit under the Act shall also be entitled to receive from her employer a medical bonus of Rs.250, if no pre-natal confinement and post-natal care is provided for by the employer free of charge.

In addition to the authorised absence under Sec.6(3), the Act provides for the following leave:

Leave for miscarriage (Sec.9): In case of miscarriage, a woman shall on production of the prescribed proof, be entitled to leave with wages at the rate of

maternity benefit, for a period of 6 weeks immediately following the day of her miscarriage.

Other leave (Sec.10): A woman suffering from illness arising out of pregnancy, delivery, premature birth of a child or miscarriage shall, on production of the prescribed proof, be entitled to leave with wages at the rate of maternity benefit for a maximum period of 1 month. This leave is in addition to the period of absence allowed to her under Sec.6 or under Sec.9.

Nursing breaks (Sec.11): Where a woman, after having delivered a child, returns to duty after such delivery, she shall be allowed in the course of her daily work 2 breaks of the prescribed duration for nursing the child until the child attains the age of 15 months. These nursing breaks shall be in addition to the interval for rest allowed to her.

Review Questions:

1. Define the following terms as used in the Maternity Benefit Act, 1961:

   (a) Miscarriage (b) Woman

2. What are the conditions for the payment of maternity benefit under the Maternity Benefit Act, 1961? When is this benefit forfeited?
3. What are the maternity benefits available to women workers under the Maternity Benefit Act, 1961?

* * *

UNIT – 5

LABOUR LAWS APPLICABLE TO HOSPITALS-II

MINIMUM WAGES ACT, 1948

The Minimum Wages Act was passed in 1948 enabling the Central and State Governments to fix minimum rates of wages. The object of the Act is to secure the welfare of the workers by fixing the minimum rates of wages in certain employments.

DEFINITIONS

Cost of Living Index Number [Sec.2(d)]

'Cost of living index number', in relation to employees in any scheduled employment in respect of which minimum rates of wages have been fixed, means the index number ascertained and declared by the competent authority by notification in the Official Gazette to be the cost of living index number applicable to employees in such employment.

Employer [Sec.2(e)]

'Employer' means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees, in any scheduled employment in respect of which minimum rates of wages have been fixed under the Act. It includes:

(i) In a factory where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under the Act, any person named as a manager of the factory under Sec.7(1)(f) of the Factories Act, 1948;

(ii) In any scheduled employment under the control of any Government in India in respect of which minimum rates of wages have been fixed under the Act, the person or authority appointed by such Government for the supervision and control of employees or where no person or authority is so appointed, the head of the department;

(iii) In any scheduled employment under any local authority in respect of which minimum rates of wages have been fixed under the Act, the person appointed by such authority for the supervision and control of employees

or where no person responsible to the owner for the supervision and control of the employees or for the payment of wages.

Wages [Sec.2(h)]

'Wages' means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a employment. It includes house rent allowance but does not include –

(i) the value of any house accommodation, supply of light, water, medical attendance, or any other service excluded by general or special order of the appropriate Government;

(ii) any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance;

(iii) any traveling allowance or the value of any traveling concession;

(iv) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(v) any gratuity payable on discharge.

Employee [Sec.2(i)]

'Employee' means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed.

FIXATION AND REVISION OF WAGES

Fixing of Minimum Rates of Wages (Sec.3)

The responsibility for fixing the minimum rates of wages is that of the appropriate Government. Sec.3 provides that the appropriate Government –

(a) shall fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either Part by notification in the Official Gazette;

(b) may, in respect of employees employed in an employment specified in Part II of the Schedule, instead of fixing minimum rates of wages for the whole State, fix such rates for a part of the State or for any specified class;

(c) shall review at such intervals not exceeding 5 years, the minimum rates of wages so fixed and revise the minimum rates if necessary.

Minimum number of employees: The appropriate Government may refrain from fixing minimum rates of wages in respect of any scheduled employment in which there are in the whole State less than 1,000 employees engaged in such employment.

Minimum Rates

The appropriate Government may fix –

(i) a minimum rate of wages for time work (referred to as 'a minimum time rate')

(ii) a minimum rate of wages for piece work (referred to as 'a minimum piece rate')

(iii) a minimum rate of remuneration to apply in the case of such employees employed on piece work for purpose of securing to such employees a minimum rate of wages on a time work basis (referred to as 'a guaranteed time rate')

(iv) a minimum rate (whether a time rate or a piece rate) to apply in substitution for the minimum rate which would otherwise be applicable, in respect of overtime work done by employees (referred to as 'overtime rate')

Different Minimum Rates: In fixing or revising minimum rates of wages, different minimum rates of wages may be fixed for –

- different scheduled employments;
- different classes of work in the same scheduled employment;
- adults, adolescents, children and apprentices;
- different localities [Sec.3(3)(a)].

Further in fixing or revising minimum rates of wages under Sec.3, minimum rates of wages may be fixed by any one or more of the following wage-periods, namely:

- by the hour,
- by the day,
- by the month, or
- by such other large wage-period as may be prescribed.

Where such rates are fixed by the day or by the month, the manner of calculating wages for a month or for a day, as the case may be, indicated.

Minimum Rate of Wages (Sec.4)

Any minimum rate of wages fixed or revised by the appropriate Government in respect of scheduled employments under Sec.3 may consist of –

(i) a basic rate of wages and a special allowance (hereinafter referred to as the 'cost of living allowance'), or

(ii) a basic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of supplies of essential commodities at concessional rates, where so authorised; or

(iii) an all inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

The cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concessional rates shall be computed by the competent authority.

Procedure for Fixing and Revising Minimum Wages (Sec.5)

Sec.5 provides two separate modes of procedure for fixing and revising minimum wages and the appropriate Government shall follow either of the two methods. In one case, a committee is appointed and in the other, notification is made and objections are invited.

1. Appointment of Committees: The appropriate Government shall appoint as many committees and sub-committees as it considers necessary to hold inquiries and advise it in respect of fixation or revision of minimum rates of wages, as the case may be.

2. Publication of Proposals in the Official Gazette: The appropriate Government shall, by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected by the fixation or revision of minimum rates of wages.

After considering the advice of the committee or committees or all representations received by it before the date specified in the notification, the appropriate Government shall, fix or revise the minimum rates of wages in respect of each scheduled employment. The fixation or revision shall come into force on the expiry of 3 months from the date of the issue of the notification.

Consultation with Advisory Board: Where the appropriate Government proposes to revise the minimum rates of wages by the mode specified, it shall also consult the Advisory Board.

The committee appointed under Sec.5(1) (a) is only an advisory body and the Government is not bound to accept its recommendation in every case.

Maintenance of Registers and Records (Sec.18)

Every employer shall maintain registers and records giving particulars of employees employed by him, the work performed by them, the wages paid to them, the receipts given by them and such other particulars and in such form as may be prescribed. He shall also keep exhibited notices in the prescribed form containing prescribed particulars in the prescribed manner in the factory, workshop or place of work.

The appropriate Government may provide for the issue of wage slips to employees in respect of minimum rates of wage fixed.

PENALTIES AND OFFENCES

Any employer who –

(a) pays to any employee less than the minimum rates of wages fixed for that employee's class of work, or less than the amount due to him under the provisions of the Act, or

(b) contravenes any rule or order made under Sec.13

shall be punishable with imprisonment for a term which may extend to 6 months, or with fine which may extend to Rs.500 or with both.

In imposing any fine for an offence under Sec.22, the Court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under Sec.20.

Review Questions:

1. Define 'Cost of Living Index'.
2. Explain (a) Employer; (b) Wages; (c) Employee
3. Explain the method of fixing minimum wages.
4. State the procedure for fixing and revising minimum wages.

* * *

PAYMENT OF WAGES ACT, 1936

The Payment of Wages Act, was passed in 1936. The object of this Act is to ensure regular and timely payment of wages to the employed persons, to prevent unauthorised deductions being made from wages and arbitrary fines being imposed on the employed persons.

DEFINITIONS

Employed Person [Sec.2(i)]

"Employed Person" includes the legal representative of a deceased employed person. (This definition makes it possible for the legal representatives of a deceased employed person to prefer a claim relating to non-payment of wages or any unauthorised deductions therefrom).

Employer [Sec.2(ia)]

"Employer" includes the legal representative of a deceased employer. After the death of employer, his legal representative can be held liable for the payment of wages due to employed persons. The liability of the legal representative is limited to the extent of the value of the estate inherited by him.

Wages [Sec.2(vi)]

'Wages' means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment. Simply stated, 'wages' means all remuneration due to any worker or employee if the terms of contract of employment are fulfilled.

RULES FOR PAYMENT OF WAGES

Responsibility for Payment of Wages (Sec.3)

Every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under the Payment of Wages Act (Sec.3). In addition the following persons are also be responsible for the payment of wages under the Act:

(a) In factories, the person named as manager;

(b) In industrial or other establishments, the person, if any, who is responsible to the employer for the supervision and control of the industrial or other establishment;

(c) Upon railways (otherwise than in factories), the person nominated by the railway administration in this behalf for the local area concerned.

Fixation of Wage Periods (Sec.4)

Every person responsible for the payment of wages under Sec.3 shall fix periods, known as wage-periods, in respect of which such wages shall be payable. A wage-period shall not exceed one month [Sec.4(2)]. In other words, payment of wages can be made daily, weekly, fortnightly or monthly.

Time for Payment of Wages (Sec.5)

The rules relating to time of payment of wages are as follows:

(1) *Wages to be paid before 7th or 10th day.* The wages of every person employed upon or in any railway, factory or industrial or other establishment upon or in which less than 1,000 persons are employed, shall be paid before the expiry of 7th day of the following wage-period. In case the number of workers exceeds 1,000 the wages shall be paid before the expiry of the 10th day of the following wage-period.

(2) *Wages in case of termination of employment.* Where the employment of any person is terminated by or on behalf of the employer, the wages earned by him shall be paid before the expiry of the 2^{nd} working day from the day on which his employment is terminated [Sec.5(2)]. Where the employment of any person in an establishment is terminated due to the closure of the establishment for any reason other than a weekly or other recognized holiday, the wages earned by him shall be paid before the expiry of the 2^{nd} day from the day on which his employment is so terminated.

(3) *Exemption.* The State Government may, by general or special order, exempt the person responsible for the payment of wages from the operation of the above provisions in certain cases [Sec.5(3)].

(4) *Wages to be paid on a working day.* All payment of wages shall be made on a working day [Sec.5(4)].

Medium of Payment of Wages (Sec.6)

All wages shall be paid in current coin or currency notes or both (Sec.6). Payment of wages in kind is not permitted. According to Sec.6 of the Act, the employer may after obtaining the written authorization of the employed person, pay him the wages either by cheque or by crediting the wages in his bank account.

DEDUCTIONS FROM WAGES

The deductions from wages of an employed person referred to in Sec.7(1) may be of the following kinds only, namely:

1. Deductions for Fines [Secs. 7(2)(a) and 8]

Fines can be deducted which are imposed on any employed person for such acts and omissions on the part of the employed person, which the employer may have specified by a notice with the approval of the State Government.

2. Deductions for Absence from Duty [Secs. 7(2)(b) and 9]

Deductions may be made on account of absence of an employed person from duty from the place or places where, by the terms of his employment, he is required to work. The absence may be for the whole or any part of the period

during which he is so required to work. But the ratio between the amount of such deductions and the wages payable shall not exceed the ratio between the period of absence and total period within such wage-period.

3. Deductions for Damage or Loss [Secs. 7(2)(c), (m), (n) and (o) and 10)]

A deduction for damage or loss should not exceed the amount of the damage or loss caused to the employer by the neglect or default of the employed person.

4. Deductions for Services [Secs. 7(2)(d), (e) and 11]

A deduction for house accommodation and such amenities and services supplied by the employer as have been authorised by the State Government.

5. Deductions for Recovery of Advances [Secs. 7(2) (f) and 12]

Recovery of advances of money given before employment and after employment shall be deducted as per the conditions of the State Government. Deductions for adjustment of over-payment of wages can also be made.

6. Deductions for Recovery of Loans [Secs. 7(2) (fff) and 12-A]

Deductions for loans granted for house-building or other purposes and the interest due in respect thereof shall be subject to any rules made by the State Government may also be made.

7. Deductions for Payments to Co-operative Societies and Insurance Schemes [Secs. 7(2) (f) and (k) and 13]

These deductions shall include the deductions for payments to co-operative societies and to a scheme of insurance.

8. Other Deductions

(1) Deductions of income-tax payable by the employed person.

(2) Deductions required to be made by order of a Court or other competent authority.

(3) Deductions for payments to co-operative societies

(4) Deductions of advances from any provident fund.

(5) Deductions for payment of premium for Insurance.

(6) Deductions, with the authorization of the employee for contribution to the Prime Minister's National Relief Fund; or to such other Fund as may be specified by the Central Government.

Limit on Deductions

The total amount of deductions which may be made under the above heads in a wage-period from the wages of any employed person shall not exceed 75 per cent of wages.

MAINTENANCE OF REGISTERS AND RECORDS (Sec.13-A)

Every employer shall maintain registers and records giving the following particulars of the persons employed by him:

- the work performed by them;
- the wages paid to them;
- the deductions made from their wages;
- the receipts given by them.

The registers and records shall be in such form as may be prescribed. They shall be preserved for a period of 3 years after the date of the last entry made therein [Sec.13-A(2)].

Penalty for Offences under the Act (Sec.20)

Penalty for delaying payment of wages within the prescribed period or making unauthorised deductions. Whoever being responsible for the payment of wages to an employed person delays payment of wages within the period laid down under the Act or makes unauthorised deductions shall be punishable with fine which shall not be less than Rs.200 but which may extend Rs.1,000 [Sec.20(1)].

Penalty for not paying wages on a working day or in current coin or not recording fines or not displaying the abstracts of the Act. Not paying the wages on a working day, or not paying wages in current coin or currency or both, or not recording the fines or amounts realized for damage or loss in a register, or not displaying by notice abstracts of the Act and rules, are also offences punishable with a fine which may extend to Rs.500 for each offence [Sec.20(2)].

Penalty for failure to maintain, furnish records and returns. Whoever being required under the Act to maintain any records or registers or to furnish any information or return shall, for each such offence, be punishable with fine which shall not be less than Rs.200 but which may extend to Rs.1,000.

PAYMENT OF BONUS ACT, 1965

The Payment of Bonus Act came into force in 1965. Its object is to maintain peace and harmony between labour and capital by allowing the employees, in recognition of their right, to share in the prosperity of the establishment.

The term "bonus" is not defined in the Payment of Bonus Act, 1965. Webster's International Dictionary, defines bonus as "something given in addition to what is ordinarily received by or strictly due to the recipient".

The scheme of the Act is three-dimensional :

(1) To define the principle of payment of bonus according to the prescribed formula;

(2) To provide for payment of minimum and maximum bonus and linking the payment of bonus with the scheme of 'set-off and set-on', and

(3) To provide machinery for enforcement of the liability for payment of bonus.

A minimum bonus of 8.33 per cent of the wage or salary of an employee is payable irrespective of the fact whether the establishment has made a profit or loss. Bonus is no longer linked with production and profitability. Liability for bonus is a statutory liability and not a contingent liability.

DEFINITIONS

Allocable Surplus [Sec.2(4)]

It means –

(a) In relation to an employer, being a company (other than a banking company) which has not made the arrangements prescribed under the Income-tax Act, 1961 for the declaration and payment within India of the

dividends payable out of its profits in accordance with the provisions of Sec.194 of the Income-tax Act, 1961, 67 per cent of the available surplus in an accounting year;

(b) In any other case, 60 per cent of the available surplus.

The allocable surplus is the workers' share in the available surplus as defined in Sec.2(6).

Available Surplus [Sec.2(6)]

It means the available surplus computed under Sec.5.

The other relevant Sections which deal with calculation of available surplus are Secs.4, 6 and 7.

Under Sec.4 gross profits are to be calculated in the manner specified in the First and Second Schedules.

According to Sec.6 the sums to be deducted from the gross profit as priority charges are any amount of depreciation, any amount by way of any direct tax calculated according to the provisions of Sec.7 and other sums mentioned in the Third Schedule.

Salary or Wage [Sec.2(2)]

It means all remuneration (other than remuneration in respect of overtime work) capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment. It includes dearness allowance (i.e., all such payments, by whatever name called, paid to an employee on account of rise in the cost of living).

ELIGIBILITY FOR BONUS (SEC.8)

Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of the Act, provided he has worked in the establishment for not less than 30 working days in that year (Sec.8). Where an employee has not worked for all the working days in any accounting year, the bonus payable to him under Sec.10 shall be proportionately reduced (Sec.13).

DETERMINATION OF BONUS

The Act has laid down a detailed procedure for calculating the amount of bonus payable to employees. First of all, Gross Profit is calculated as per First or Second Schedule. From his Gross Profit, the sums deductible under Section 6 are deducted. To this figure, we add the sum equal to the difference between the direct tax calculated on gross profit for the pervious year and direct tax calculated on gross profit arrived at after deducting the bonus paid or payable to the employees. The figure so arrived will be the "available surplus". Of this surplus, 67% in case of company (other than a banking company) and 60% in other cases, shall be the "allocable surplus" which is the amount available for payment of bonus to employees. The details of such calculations are given below.

I. Computation of Gross Profit (Sec.4)

The computation of gross profits for an accounting year for the purpose of the bonus formula is the first step. It is calculated according to Sec.4 of the Act.

The starting point in the computation of the gross profits is the net profit as shown in the Profit and Loss Account after making usual and necessary provisions.

Items to be added back to net profit :

The following items shall be added to the net profit of the relevant accounting year as shown in that year's Profit and Loss Account:

(1) Provision for bonus to employees and bonus paid in respect of previous accounting years, to the extent charged to Profit and Loss Account.

(2) Provision for depreciation.

(3) Provision for direct taxes, including the provision (if any) for previous accounting years.

(4) Provision for development rebate/ investment allowance/ development allowance reserve, to the extent charged to Profit and Loss Account.

(5) Provision for any other reserves, to the extent charged to Profit and Loss Account.

(6) The amount debited in respect of gratuity paid or payable to employees in excess of the aggregate of (i) the amount, if any, paid to, or provided for

payment to, an approved gratuity fund; and (ii) the amount **actually paid** to employees on their retirement or on termination of their **employment** for any reason.

(7) Donations in excess of the amount admissible for income-tax.

(8) Any annuity due, or commuted value of any annuity paid under the provisions of Sec.280-D of the Income-tax Act, 1961 during the accounting year.

(9) Capital expenditure (other than capital expenditure on scientific research which is allowed as a deduction under any law relating to direct taxes) and capital losses (other than losses on sale of capital assets on which depreciation has been allowed for income-tax or agricultural income-tax), to the extent charged to Profit and Loss Account.

(10) Losses of, or expenditure relating to, any business situated outside India.

(11) Income, profits or gains (if any) credited directly to reserves, other than –

- capital receipts and capital profit (including profits on the sale of capital assets on which depreciation has not been allowed for income-tax or agricultural income-tax),
- profits of, and receipts relating to, any business situated outside India.
- income of foreign concerns from investments outside India.

Items to be deducted :

The following items (these items are in addition to sums which have to be deducted from gross profits under Sec.6) shall be deducted from the aggregate of the items added back to the net profit as discussed above, namely:

(a) Capital receipts and capital profits (other than profits on the sale of assets on which depreciation has been allowed for income-tax or agricultural income-tax), to the extent credited to Profit and Loss Account.

(b) Profits of, and receipts relating to, any business situated outside India, to the extent credited to Profit and Loss Account.

(c) Income of foreign concerns from investments outside India, to the extent credited to Profit and Loss Account.

(d) Expenditure or losses (if any) debited directly to reserves, other than –

- capital expenditure and capital losses (other than losses on sale of capital assets on which depreciation has not been allowed for income-tax or agricultural income-tax),
- losses of any business situated outside India.

(e) In the case of foreign concerns proportionate administrative (overhead) expenses of Head Office allocable to Indian business.

(f) Refund of any direct tax paid for previous accounting years and excess provision, if any, of previous accounting years relating to bonus, depreciation, taxation or development rebate or development allowance, if written back, to the extent credited to Profit and Loss Account.

(g) Cash subsidy, if any, given by the Government or by any body corporate established by any law for the time being in force or by any other agency through budgetary grants.

The resultant figure (after making the necessary additions to, and deductions from, the net profit) is the gross profit for the purposes of bonus.

II Determination of Available Surplus (Sec.5)

The next step, after the determination of gross profits in the manner discussed above, is the determination of available surplus. The available surplus in respect of any accounting year shall be the gross profits for that year after deducting there from the sums referred to in Sec.6.

Sums deductible from gross profit (Sec.6)

Sec.6 specifies the sums that are to be deducted from gross profits as prior charges. These sums are as follows:

(a) Any amount by way of depreciation admissible in accordance with the provisions of Sec.32 (1) of the Income-tax Act, 1961 or in accordance with the provisions of the agricultural income-tax law, as the case may be.

(b) Any amount by way of development rebate or investment allowance or development allowance which the employer is entitled to deduct from his income under the Income-tax Act, 1961.

(c) Any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year. This deduction is subject to the provisions of Sec.7 which deals with the calculation of direct tax payable by the employer.

(d) Any other sum specified in respect of the employer in the Third Schedule.

The amount which remains after deducting the above sums (known as prior charges) from gross profits is the 'available surplus' for distribution as 'bonus'.

Of this available surplus, 67% in case of company and 60% in other cases, shall be the "allocable surplus" which is the amount available for payment of bonus to employees.

ALLOCABLE SURPLUS

After determining the 'available surplus', the employees' share known as 'allocable surplus' is to be determined. The allocable surplus is the workers' share in the available surplus. The rules to be followed for its distribution are as follows:

1. Amount of Bonus:

The bonus formula as envisaged in the Act provides for the payment of minimum and maximum bonus to the employees in an accounting year.

(a) Minimum Bonus (Sec.10): A minimum bonus is 8.33 per cent of the salary or wage earned by the employee during the accounting year or Rs.100 whichever is higher. Even if the employer suffers losses during the accounting year, he is bound to pay minimum bonus as prescribed by Sec.10.

(b) Maximum Bonus (Sec.11): Bonus at a rate higher than the minimum rate is payable only when the allocable surplus in a particular accounting year exceeds the amount of minimum bonus payable to the employees. In such case the employer shall be bound to pay to

every employee in the accounting year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of 20 per cent of such salary or wage.

In computing the allocable surplus under Sec.11, the amount 'set on' or 'set off' under the provisions of Sec.15 shall be taken into account in accordance with the provisions of the Section.

2. Calculation of bonus with respect to certain employees (Sec.12)

Where the salary or wage of an employee exceeds Rs.1,600 per mensem, the bonus payable to such employee under Sec.10 or, as the case may be under Sec.11, will be calculated as if his salary or wage were Rs.1,600 per mensem.

3. 'Set on' and 'Set off' of allocable surplus (Sec.15)

The allocable surplus for the payment of bonus for the relevant accounting year is arrived at after taking into account the figures of 'set on' and 'set off' in the previous year. The rules relating to 'set on' and 'set off' of the allocable surplus are as under:

(1) Set on: Where the allocable surplus for any accounting year exceeds the amount of maximum bonus payable to the employees in the establishment under Sec.11, then the excess of allocable surplus, subject to a limit of 20 per cent of the total salary or wage of the employees employed in the establishment in that accounting year, shall be carried forward for being set on to the succeeding accounting year and so on up to and inclusive of the fourth coming year.

This excess amount which is carried forward shall be utilized for the purpose of payment of bonus in the manner illustrated in the Fourth Schedule.

(2) Set off: Where for any accounting year, there is no allocable surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees in the establishment under Sec.10, and there is no amount or sufficient amount carried forward and set on which could be utilized for the purpose of payment of the minimum bonus, then such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding

accounting year and so on up to and inclusive of the fourth accounting year in the manner illustrated in the Fourth Schedule.

The Fourth Schedule illustrates the method of calculation of allocable surplus, its distribution and set off or set on of the amount available out of it.

THE FOURTH SCHEDULE

(See Secs. 15 and 16)

In this Schedule the total amount of bonus equal to 8.33 percent of the annual salary or wage payable to all employees is assumed to be Rs.1,04,167. Accordingly the maximum bonus to which all the employees are entitled to be paid (20 per cent of the annual salary or wage of all the employees) would be Rs.2,50,000.

Year	Amount equal to 60% or 67%, as the case may be, of available surplus allocable as bonus	Amount payable as bonus	Set on or set off of the year carried forward	Total set on or set off carried forward	
(1)	(2)	(3)	(4)	(5)	
	Rs.	Rs.	Rs.	Rs.	
1.	1,04,167	1,04,167**	Nil	Nil	
2.	6,35,000	2,50,000*	Set on 2,50,000*	Set on 2,50,000	(2)
3.	2,20,000	2,50,000* (inclusive of 30,000 from year 2)	Nil	Set on 2,20,000	(2)
4.	3,75,000	2,50,000*	Set on 1,25,000	Set on 2,20,000 1,25,000	(2) (4)

5.	1,40,000	2,50,000* (inclusive of 1,10,000 from year 2)	Nil	Set on 1,10,000 1,25,000	 (2) (4)
6.	3,10,000	2,50,000*	Set on 60,000	Set on Nil*** 1,25,000 60,000	 (2) (4) (6)
7.	1,00,000	2,50,000* (inclusive of 1,25,000 from year 4 and 25,000 from year 6)	Nil	Set on 35,000	 (6)
8.	Nil (due to loss)	1,04,167** (inclusive of 35,000 from year 6)	Setoff 69,167	Set off 69,167	 (8)
9.	10,000	1,04,167**	Set off 94,167	Set off 69,167 94,167	 (8) (9)
10.	2,15,000	1,04,167** (after setting off 69,167 from year 8 and 41,666 from year 9)	Nil	Set off 52,501	 (9)

Notes: * Maximum

** Minimum

*** The balance of Rs.1,10,000 set on year 2 lapses.

4. Time limit for payment of bonus (Sec.19)

All amounts payable to an employee by way of bonus under the Act shall be paid in cash by his employer within a period of 8 months from the close of the accounting year.

Review Questions:

1. Define the following terms as used in the Payment of Bonus Act, 1965:

   (a) Allocable Surplus, (b) Available Surplus

2. Explain how bonus is calculated.
3. Explain the Rule of 'Set on' and 'Set off' of allocable surplus.
4. How is 'available surplus' determined under the Payment of Bonus Act? What part of it can be distributed amongst the employees as bonus?

* * *

UNIT – 6

LABOUR LAWS APPLICABLE TO HOSPITALS-III

FACTORIES ACT, 1948

The Factories Act, 1948 came into force on the 1st day of April, 1949. Its object is to regulate the conditions of work in manufacturing establishments which come within the definition of the term 'factory' as used in the Act.

DEFINITIONS

Factory [Sec.2(m)]

'Factory' means any premises including the precincts thereof –

(i) whereon 10 or more workers are working or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on *with the aid of power*, or is ordinarily so carried on.

(ii) whereon 20 or more workers are working or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on *without the aid of power*, or is ordinarily so carried on.

In simple words, a factory is a premises whereon 10 or more persons are engaged if power is used, or 20 or more persons are engaged if power is not used, in a manufacturing process.

Worker [Sec.2(i)]

A worker means a person employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in any other kind or work incidental to, or connected with, the manufacturing process or the subject of the manufacturing process but does not include any member of the armed forces of the Union.

Adult [Sec.2(a)]: An 'adult' means a person who has completed his 18th year of age.

Adolescent [Sec.2(b)]: An 'adolescent' means a person who has completed his 15th year of age.

Child [Sec.2(c)]: An 'child' means a person who has not completed his 15th year of age.

Young Person [Sec.2(d)]: An 'young person' means a person who is either a child or an adolescent.

Day [Sec.2(3)]: It means a period of 24 hours beginning at midnight.

Week [Sec.2(f)]: It means a period of 7 days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Chief Inspector of Factories.

Occupier [Sec.2(n)]: 'Occupier' of a factory means the person who has ultimate control over the affairs of the factory.

- In the case of a firm or other association of individuals, any one of the partners or members thereof shall be deemed to be the occupier.
- In the case of a company, the directors shall be deemed to be the occupier.
- In the case of a factory owned or controlled by the Central Government or State Government or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier.

THE INSPECTING STAFF

Inspectors (Sec.8)

As per this section, the State Government may, by notification in the Official Gazette, appoint any person to be a Chief Inspector to exercise the powers conferred on him by the Factories Act. The State Government may also appoint as many Additional Chief Inspectors, Joint Chief Inspectors, Deputy Chief Inspectors, and as many other officers as it thinks fit, to assist the Chief Inspector and to exercise such of the powers of the Chief Inspector as may be specified in the notification [Sec.8(2-A)]. These officers are public servants.

Every District Magistrate shall be an Inspector for his district. The State Government may appoint certain public officer, to be the Additional Inspectors for certain areas assigned to them. [Sec.8(5)].

When in any area, there are more inspectors than one, the State Government may by notification in the Official Gazette, declare the powers which such Inspectors shall respectively exercise and the Inspector to whom the prescribed notices are to be sent.

Inspector appointed under the Act is an Inspector for all purposes of this Act. Assignment of local area to an Inspector is within the discretion of the State Government.

A Chief Inspector is appointed for the whole State. He shall in addition to the powers conferred on a Chief Inspector under this Act, exercise the powers of an Inspector throughout the State. Therefore, if a Chief Inspector files a complaint, the court can legally take cognizance of an offence. Even assignment of areas under Sec. 8(6) does not militate in any way against the view that the Chief Inspector can file a complaint enabling the court to take cognizance. The Additional, Joint or Deputy Chief Inspectors or any other officer so appointed shall in addition to the powers of a Chief Inspector, exercise the powers of an Inspector throughout the State.

Powers of Inspectors (Sec.9)

An Inspector may, within the local limits for which he is appointed –

(a) enter, with assistants who are in the service of the Government or any local or other public authority or with an expert, the premises of a factory;

(b) make examination of the premises, plant, machinery, article or substance;

(c) inquire into any accident or dangerous occurrence, whether resulting in bodily injury, disability or not, and take on the spot or otherwise statements of any person which he may consider necessary for such inquiry;

(d) require the production of any prescribed register or any other document relating to the factory;

(e) seize, or take copies of, any register, record or other document or any portion thereof, as he may consider necessary in respect of any offence under this Act, which he has reason to believe, has been committed;

(f) direct the occupier that any premises or any part thereof, or anything lying therein, shall be left undisturbed (whether generally or in particular

aspects) for so long as is necessary for the purpose of any examination under Clause (b);

(g) take measurements and photographs and make such recordings as he considers necessary for the purpose of any examination under Clause (b) taking with him any necessary instrument or equipment;

(h) in case of any article or substance found in any premises, being an article or substance which appears to him as having caused or is likely to cause danger to the health or safety of the workers, direct it to be dismantled or subject it to any process of test. Further, he may take possession of any such article or substance or a part thereof, and detain it for so long as is necessary for such examination;

(i) exercise which other powers as may be prescribed.

Additional Powers

An inspector has also the power –

- to require medical examination of a 'young person' working in a factory (Sec.75), and also
- to take sample of any substance used, or intended to be used, in a factory for the purpose of finding out if the substance is injurious to the health of the workers (Sec.91).

Certifying Surgeons (Sec.10)

Appointment:

The State Government may appoint qualified medical practitioners to be certifying surgeons for specified local limits or factories [Sec.10(1)]. A certifying surgeon may, with the approval of the State Government, authorise any qualified medical practitioner to exercise any of his powers [Sec.10(2)].

Duties of Certifying Surgeons:

The certifying surgeon shall carry out such duties as may be prescribed in connection with –

(a) the examination and certification of young persons;

(b) the examination of persons engaged in factories in dangerous occupations or processes;

(c) the exercising of such medical supervision as may be prescribed for any factory where

- cases of illness have occurred which it is reasonable to believe or due to the nature of the manufacturing process carried on, or other conditions of work prevailing, therein;
- by reason of any change in the manufacturing process carried on or in the substances used therein, there is a likelihood of injury to the health of workers employed in that manufacturing process;
- young persons are, or are about to be, employed in any work which is likely to cause injury to their health [Sec.10(4)].

Welfare Officer

Section 49 of the Act imposes statutory obligation upon the occupier of the factory of the appointment of Welfare Officer/s wherein 500 or more workers are ordinarily employed. Duties, qualifications and conditions of service may be prescribed by the State Government.

Safety Officer

Section 40-B empowers the State Government for directing a occupier of factory to employ such number of Safety Officers as specified by it where more than 1,000 workers are employed or where manufacturing process involves risk of bodily injury, poisoning or disease or any other hazard to health of the persons employed therein. The duties, qualifications and working conditions may be prescribed by the State Government.

HEALTH, SAFETY AND WELFARE MEASURES

The Act makes detailed provisions under Chapters III, IV and V of the Act with regard to various matters relating to health, safety and welfare of the workers. These provisions impose upon the occupiers or mangers certain obligations

- to protect workers from accidents, and
- to secure for them in employment, conditions conducive to their health, safety and welfare.

HEALTH

Chapter III (Secs. 11 to 20) of the Act deals with the provisions ensuring the health of the workers. These provisions are as follows:

1. Cleanliness (Sec.11) :

- Factory to be kept clean and free from effluvia and dirt.
- Effective means of drainage shall be provided.
- Use of disinfectants, detergents, painting, repainting and varnishing, revarnishing, whitewashing or colourwashing shall be resorted to.

2. Disposal of Wastes and Effluents (Sec.12) :

- Effective arrangements shall be made in every factory for the treatment of wastes and effluents due to manufacturing process carried on therein.
- State Government may make rules prescribing the arrangements to be made in this regard.

3. Ventilation and Temperature (Sec.13) :

- Effective and suitable provision shall be made in every factory for securing and maintaining adequate ventilation and temperature.
- The process which produces high temperatures shall be separated from the workroom, by insulating the hot parts or by other effective means.
- The State Government may prescribe a standard of adequate ventilation and reasonable temperature for any factory and direct that proper measuring instruments shall be provided and such records as may be prescribed shall be maintained [Sec.13(2)].
- Prescription of measures by the State Government to reduce temperatures.
- Service of notice by the Chief Inspector on the occupier to adopt measures for reduction of temperatures.

4. Dust and Fume (Sec.14) :

- Effective measures for prevention of inhalation or accumulation of dust and fumes shall be taken.
- Exhaust for internal combustion engine.

5. Artificial Humidification (Sec.15) :

- Prescribing standards of humidification–ventilation and cooling of air.
- Water used for artificial humidification should be clean.

6. Overcrowding (Sec.16) :

- Overcrowding injuries to health of workers to be avoided.
- There shall be at least 9.9 cubic metres and 14.2 cubic metres of space for every worker.
- Notice of maximum of workers to be employed in a workroom.

7. Lighting (Sec.17) :

- Sufficient and suitable lighting in every part of factory shall be provided.
- Glazed windows and skylights to be kept clean.
- Measures for prevention of glare and formation of shadows should be taken.
- Prescription of standards of sufficient and suitable lighting.

8. Drinking Water (Sec.18) :

- Effective arrangements shall be made to provide and maintain at suitable points conveniently situated for all workers employed therein a sufficient supply of wholesome drinking water.
- Drinking points to be legibly marked and to be away from urinal, latrine etc.
- Cooling of drinking water where more than 250 workers employed.

9. Latrines and Urinals (Sec.19) :

- Separate latrines and urinals for male and female workers conveniently situated and adequately lighted and ventilated.
- Latrine and urinal accommodation to be of prescribed sanitary types – floors and walls to be glazed and their cleaning.

10. Spittoons (Sec.20) :

- Sufficient number of spittoons shall be maintained in a clean and hygienic condition.
- A notice containing the provision of spittoons in the factory shall be prominently displayed at suitable places in the premises.
- Whoever spits in contravention of Sec.20 (3) shall be punishable with fine.

SAFETY

The safety provisions are absolute and obligatory in their character and the occupier of every factory is bound to follow them. They are contained in Chapter IV (Secs. 21 to 41).

1. Fencing of Machinery (Sec.21) :

- Dangerous part of every machinery to be securely fenced.
- Prescription of further precautions by State Government.

2. Work on or near Machinery in Motion (Sec.22) :

- Examination of machinery in motion by a trained adult male worker.
- Restriction on women and young persons to work on machinery in motion.

3. Employment of Young Persons on Dangerous Machines (Sec.23) :

- Restriction on young persons to work on dangerous machines.
- Machines dangerous for young persons to be specified by the State Government.

4. Striking Gear and Devices for Cutting off Power (Sec.24) :

- Suitable striking gear to be provided, maintained and used.
- Locking device to prevent accidental starting of transmission machinery.

5. Self-acting Machines (Sec.25) :

- No transversing part of self-acting machine in any factory and no material carried thereon shall be allowed to run on its outward or inward

transverse within a distance of 45 centimeters from any fixed structure which is not part of the machine.

6. Casing of New Machinery (Sec.26) :

- All machinery driven by power and installed in a factory – every set screw, bolt or key or any revolving shaft, spindle, wheel or pinion shall be so sunk, encased or otherwise effectively guarded as to prevent danger.
- If any one sells or lets on hire either directly or as an agent, any machine which does not comply with the provisions of Sec.26, he shall be punishable with imprisonment or with fine or with both.

7. Prohibition of Employment of Women and Children near Cotton-openers (Sec.27) :

- No women or child shall be employed in any part of a factory for pressing cotton in which a cotton-opener is at work. They should be employed on the side of the partition where the feed-end is situated.

8. Hoists and Lifts (Sec.28) :

- Hoists and lifts to be of good mechanical construction and to be properly maintained and examined once in every 6 months.
- No lifting machine or appliance shall be deemed to be a hoist or lift unless it has a platform or cage, the direction or movement of which is restricted by a guide or guides.

9. Lifting Machines, Chains, Ropes and Lifting Tackles (Sec.29) :

- Cranes and lifting machines etc. to be of good construction and to be examined once in every 12 months.
- Cranes and lifting machines not to be loaded beyond safe working load.
- Crane not to approach within 6 metres of a place where any person is employed or working.

10. Revolving Machinery (Sec.30) :

- Notice of maximum safe working speed of grindstone or abrasive wheel etc. to be kept near machine.
- The speeds indicated in notices under Sec.30(1) shall not be exceeded.

- Effective measures shall be taken in every factory to ensure that the safe working peripheral speed of every revolving vessel, cage, basket, fly-wheel, pulley, disc or similar appliance driven by power is not exceeded.

11. Pressure Plant (Sec.31) :

- Safe working pressure not to be exceeded.
- Rule-making power of the State Government providing for examination and exemption.

12. Floors, stairs and means of access (Sec.32) :

- All floors, steps, stairs, passages and gangways shall be of sound construction and properly maintained.
- Safe means of access to every place at which any person is at any time required to work shall be provided and maintained.
- When any person has to work at a height from where is likely to fall, provision shall be made.

13. Pits, sumps, opening in floors, etc. (Sec.33) :

- Pits, sumps etc. to be securely covered or fenced.
- The State Government may, by order in writing, exempt any factory in respect of any vessel, sump, tank, pit or opening from compliance with the above provision.

14. Excessive Weights (Sec.34) :

- Prohibition on lifting or carrying of excessive weights.
- Maximum weights to be lifted or carried to be prescribed.

15. Protection of Eyes (Sec.35) :

- In every factory, screen or suitable goggles shall be provided for the protection of persons employed on, or other process which involve any danger or injury to the workers' eyesight.

16. Precautions against Dangerous Fumes, Gases etc. (Sec.36) :

- Prohibition on entry into any chamber, tank, vat, pit, pipe etc. where any gas, fume etc. is present.

- Practicable measures to be taken for removal of gas, fume etc. shall be taken.

17. Precautions regarding the use of Portable Electric Light (Sec.36-A) :

- No portable electric light or any other electric appliance of voltage exceeding 24 volts shall be permitted for use inside any chamber, tank, vat, pit, flue or other confined space in a factory, unless adequate safety devices are provided.

18. Precautions against Explosive or Inflammable dust, gas etc. (Sec.37) :

- Practicable measures to prevent explosion on ignition of gas, fume etc. shall be taken.
- Provision of chokes, vents, etc. to restrict the spread of the explosion.
- Special measures are taken where explosive or inflammable gas or vapour is under pressure greater than atmospheric pressure.
- A plant, tank or vessel containing explosive or inflammable substance shall not be welded, brazed, soldered or cut by applying heat until such substance and fumes are rendered non-explosive and non-inflammable.
- The State Government may by rules exempt any factory from compliance with all or any of the provisions of Sec.37.

19. Precautions in case of Fire (Sec.38) :

- Practicable measures shall be taken to prevent outbreak of fire and its spread, both internally and externally, and to provide and maintain – safe means of escape for all persons in the event of a fire; and the necessary equipment and facilities for extinguishing fire.
- Effective measures shall be taken to ensure that in every factory all the workers are familiar with the means of escape in case of fire and have been adequately trained .

20. Power to require specification of defective parts or test of stability (Sec.39)

If the inspector feels that the conditions in the factory are dangerous to human life or safety he may serve on the occupier or manger or both notice in writing requiring him before the specified date to furnish such drawings,

specifications and other particulars as may be necessary to determine whether such building, machinery or plant can be used with safety or to carry out such test in such a manner as may be specified in the order and to inform the inspector of the results thereof.

21. Safety of Buildings or Machinery (Sec.40)

The inspectors in the case of dangerous conditions of building or any part of ways, machinery or plant require the manager or occupier or both to take such measures which in his opinion should be adopted and require them to be carried out before a specified date. In case the danger to human life is immediate and imminent from such usage of building, ways of machinery he may order prohibiting the use of the same unless it is repaired or altered.

22. Maintenance of Buildings (Sec.40-A)

If it appears to the inspector that any building or part of it is in such a state of disrepair which may lead to conditions detrimental to the health and welfare of workers he may serve on the manager or occupier or both, an order in writing specifying the measures to be carried out before a specified date.

23. Safety Officers (Sec.40-B)

In every factory (i) where 1,000 or more workers are ordinarily employed, or (ii) where the manufacturing process or operation involves risk of bodily injury, poisoning or disease or any other hazard to health of the persons employed therein, the occupier shall **employ** such number of safety officers as may be specified in the notification with such duties and qualifications and conditions of service as may be prescribed by State Government.

WELFARE

Chapter V (Sec.42 to 50) of the Act deals with facilities for the welfare of workers. The various provisions in this regard are as follows:

1. Washing Facilities (Sec.42) :

- In every factory adequate and suitable facilities shall be provided and maintained for the use of the workers
- Such facilities shall be conveniently accessible and shall be kept clean.

2. Facilities for Storing and Drying Clothing (Sec.43) :

- o The State Government may make rules requiring the provision of suitable places for keeping clothing of workers not worn during working hours and for the drying of wet clothing in respect of any factory or class of factories.

3. Facilities for Sitting (Sec.44) :

- o Provision of sitting arrangement for workers obliged to work in a standing position.
- o Provision of seating arrangement for workers doing work which can be done in a sitting position.

4. First-aid Appliances (Sec.45) :

- o There should be at least one first-aid box with prescribed contents for every 150 workers.
- o First-aid box should contain only the prescribed contents.
- o First-aid box to be in charge of responsible person.
- o There should be an Ambulance room in every factory employing more than 500 workers.

5. Canteens (Sec.46) :

- o Canteen shall be provided and maintained in factory employing more than 250 workers

6. Shelters, rest rooms and lunch rooms (Sec.47) :

- o Provision to be made for shelters, rest rooms, lunch rooms in factories employing more than 150 workers.
- o Shelters etc. to be sufficiently lighted, ventilated and cooled.

7. Creches (Sec.48) :

- o Provision to be made for Creches in factories employing more than 30 women workers.
- o Creches to be adequately lighted and ventilated and to be under the charge of trained women.

8. Welfare Officers (Sec.49) :

- Employment of Welfare Officers in factories employing 500 or more workers.

- The State Government may prescribe the duties, qualifications and conditions of service of welfare officers.

The State Government may make rules exempting, subject to compliance with such alternative arrangements for the welfare of workers as may be prescribed, any factory or class or description of factories from compliance with any of the provisions of Secs. 42 to 49.

WORKING HOURS OF ADULTS

Chapter VI contains provisions for regulating working hours for the adult workers. The rules as to the regulation of hours of work of adult workers in a factory and holidays are as follows:

1. *Weekly hours* (Sec. 51): No adult worker shall be required or allowed to work in a factory for more than 48 hours in any week.

2. *Weekly holidays* (Sec.52): This section provides that there shall be a holiday for the whole day in every week and such weekly holiday shall be on the first day of the week. However, such holiday may be substituted for any one of the three days immediately before or after the first day of the week.

3. *Compensatory holidays* (Sec.53): Where a worker is deprived of any of the weekly holidays under Sec.52 or by any of the rules made by the State Government exempting a factory from the provisions of Sec.52, he shall be allowed compensatory holidays for equal number of the holidays so lost. Such compensatory holidays shall be allowed within the month in which the holidays were due to the workman or within 2 months immediately following that month.

   The State Government may prescribe the manner in which the compensatory holidays shall be allowed.

4. *Daily hours* (Sec. 54): Subject to the above rule no adult worker shall be required or allowed to work in a factory for more than 9 hours in any day.

5. *Intervals for rest* (Sec. 55): The periods of work of adult workers in a factory each day shall be so fixed that no period shall exceed 5 hours. Further, no worker shall work for more than 5 hours before he has an interval for rest of at least half an hour. The total number of hours worked without an interval shall not exceed 6 hours.

6. *Spreadover* (Sec.56): This section provides that the daily working hours should be adjusted in such a manner, that inclusive of rest interval under Section 55, they are not spreadover more that 10 ½ hours on any day.

Night Shifts (Sec.57) :

Where a worker in a factory works on a shift which extends beyond midnight –

(a) his weekly or compensatory holiday for a whole day means a period of 24 consecutive hours beginning when his shift ends, and

(b) the following day for him shall be deemed to be the period of 24 hours beginning when such shift ends, and the hours he has worked after midnight shall be counted in the previous day.

Extra Wages for Overtime (Sec.59) :

1) *Wages at twice the ordinary rate:* Where a worker works in a factory for more than 9 hours in a day or more than 48 hours in any week, he shall in respect of overtime work be entitled to wages at the rate of twice his 'ordinary rate of wages' [Sec.59(1)].

2) *Ordinary rate of wages:* It means the basic wages plus such allowances, including the cash equivalent of the advantage accruing through the concessional sale to workers of foodgrains and other articles, as the worker is for the time being entitled to. It does not include a bonus and wages for overtime work [Sec.59(2)].

3) *Workers paid on piece rate basis:* The time rate in case of workers paid on piece rate shall be deemed to be equivalent to the daily average of their full time earnings for the days on which they actually worked on the same or identical job during the month immediately preceding the calendar month during which the overtime work was done, and such time rates shall be deemed to be the ordinary rates of wages of those workers [Sec.59(3)].

Restriction on Double Employment (Sec.60)

No adult worker shall be required or allowed to work in any factory on any day on which he has already been working in any other factory served in such circumstances as may be prescribed.

ANNUAL LEAVE WITH WAGES

Secs. 78 to 84 (Chapter VIII) provide for the grant of a certain period of leave with wages to workmen.

Rules relating to Annual Leave with Wages

1. *Leave entitlement* – Every worker who has worked for a period of 240 days or more in a factory during a calendar year shall be allowed during the subsequent calendar year leave with wages for a certain number of days. These days of leave shall be calculated at the rate of –
   - ✓ If an adult, one day for every 20 days of work performed by him during the previous calendar year;
   - ✓ If a child, one day for every 15 days of work performed by him during the previous calendar year [Sec. 79(1)].

   The leave admissible under the above rule shall be exclusive of all holidays whether occurring during or at either end of the period of leave.

2. *Computation of period of 240 days:* For computing the period of 240 days, the days of lay-off, maternity leave to a female worker not exceeding 12 weeks, and the leave earned in the previous year shall be included in this period of 240 days, but he/she shall not earn leave for these days.

3. *Discharge, dismissal, superannuation, death or quitting of employment:* If a worker is discharged or dismissed from service or quits his employment or is superannuated or dies while in service, during the course of the calendar year, he or his heir or nominee, as the case may be, shall be entitled to wages. These wages shall be in lieu of the quantum of leave to which he was entitled calculated at the rates specified in Sec.79(1).

4. *Treatment of fraction of leave:* In calculating leave period, fraction of leave of half a day or more shall be treated as one full day's leave, and fraction of less than half a day shall be omitted.
5. *Treatment of unavailed leave:* If a worker does not in any one calendar year take the whole of the leave allowed to him, any leave not taken by him shall be added to the leave to be allowed to him in the succeeding calendar year. But the total number of days of leave that may be carried forward to a succeeding year shall not exceed 30 in the case of an adult or 40 in the case of a child. However, annual leave not allowed because of any scheme for leave in operation shall be carried forward without any limit.
6. *Application for leave to be made in writing within a specified time:* A worker may at any time apply for annual leave in writing to the manager of the factory at least 15 days before the date on which he wishes his leave to begin. In a public utility service the application shall likewise be made at least 30 days before the date on which the worker wishes his leave to begin.
7. Annual leave with wages cannot be availed for more than three times during the year.
8. The application to avail annual leave with wages for illness purposes can be made at any time.
9. An application for leave which does not contravene the provisions of Sec.79(6) shall not be refused unless the refusal is in accordance with the scheme for the time being in operation under sub-sections (8) and (9) of Sec.79.
10. *Scheme for the grant of leave:* For the purpose of ensuring the continuity of work, the occupier or the manager of a factory may draw up and submit with the Chief Inspector a scheme for regulating the grant of leave.
11. *Display of scheme for grant of leave:* The scheme shall be displayed at some convenient and conspicuous places in the factory. It shall be in force in the first instance for 12 months, and may be renewed for a further period of 12 months at a time. A notice of renewal shall be sent to the Chief Inspector before it is renewed.

12. *Payment of wages to worker for leave period if he is discharged or if he quits service:* If a worker being entitled to leave according to the rules is discharged, or if having applied for is refused leave and quits service before he has taken the leave, he shall be paid wages in respect of the leave not taken.

13. *Unavailed leave not to be taken into account while computing period of notice:* The unavailed leave of a worker shall not be taken into consideration in computing the period of any notice required to be given before discharge or dismissal.

Wages during Leave Period (Sec.80)

For the leave allowed to a worker he shall be entitled to wages at a rate equal to the daily average of his total full time earnings for the days on which he actually worked during the month immediately preceding his leave. The full time earnings shall be exclusive of any overtime and bonus but inclusive of dearness allowance.

Review Questions:

1. Define the terms factory, occupier, adult, adolescent, young person, worker and manufacturing process, as used in the Factories Act, 1948.
2. Who are the Certifying Surgeons? What are their duties?
3. Describe the procedure of appointment of Inspectors under the Factories Act, 1948. What are their duties and powers?
4. State the provisions of the Factories Act, 1948 with regard to health, safety and welfare of the workers.
5. What are the weekly and daily hours for which an adult worker may be required or allowed to work in a factory?
6. State the provisions of the Factories Act, 1948 regarding (a) weekly holidays and (b) annual leave with wages.

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WORKMEN'S COMPENSATION ACT, 1923

The Workmen's Compensation Act was passed in 1923 and it came into force on the first day of July 1924. It is a social security legislation. The main object of the Act is to provide for the payment of compensation by certain classes of employers to their workmen for injury by accident.

DEFINITIONS

Sec.2 gives the definitions of the terms used in the Act. Some of the important definitions are as follows:

Disablement

The Act does not define the word "Disablement". It only defines the "partial" and "total disablement". Disablement means loss of capacity to work or to move. Disablement of a workman may result in loss or reduction of his earning capacity. In the latter case, he is not able to earn as much as he used to earn before his disablement.

Disablement may be (i) partial, or (ii) total. Further it may be (i) permanent, or (ii) temporary.

Partial Disablement [Sec.2(1)(g)]

This means any disablement as reduces the earning capacity of a workman as a result of some accident. Partial disablement may be temporary or permanent.

Temporary Partial Disablement means any disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of accident which resulted in such disablement.

Permanent Partial Disablement is one which reduces for all time his earning capacity in every employment which he was capable of undertaking at the time.

Total disablement [Sec.2(1)(*l*)]

It means such disablement, whether of a temporary or permanent nature, which incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement. It refers to that condition where a workman becomes unfit for every type of work and is not able to get job anywhere due to that disablement.

EMPLOYER'S LIABILITY FOR COMPENSATION (Sec.3)

An employer is liable to pay compensation to a workman for –

- personal injury caused to him by accident; and
- occupational diseases contracted by him.

Occupational Diseases

Workers employed in certain occupations are exposed to certain diseases which are inherent in those occupations. For example, a person engaged in any process involving use of lead tetra-ethyl is liable to contract poisoning by lead tetra-ethyl, and a person employed as a telegraph operator may contract telegraphist's cramp. All such diseases are known as occupational diseases. Contracting of an occupational disease is deemed to be an injury by accident within the meaning of Sec.3(2). In such a case, unless the contrary is proved, the accident is deemed to have arisen out of and in the course of employment. As such, the employer is liable to pay compensation if the disease can be directly attributable to a specific injury by accident arising out of and in the course of employment.

Personal Injury by Accident

An employer is liable to pay compensation to a workman if personal injury is caused to him by accident arising out of and in the course of his employment.[Sec.3(1)].

Personal Injury: The word 'personal injury' means damage done to a workman by some accident. The Act contemplates compensation for personal injury. It is not necessarily confined to physical or mental injury. It includes psychological and physiological injury as well [Yates v. South Kirby Collieries]. Thus nervous shock causing incapacity to work is as much a personal injury as a broken limb.

Accident: The word 'accident' means some a mishap or an toward event which is not expected or designed [Fenton v. Thorley] by the injured workman himself even though there may be negligence on his part. Therefore, if an occurrence is unexpected and without any design on the part of the workman, it is accident.

Arising out of and in the Course of Employment

The employer is liable to pay compensation only if personal injury is caused to a workman by ***an accident arising out of and in the course of his employment***.

In order to prove that injury arose 'out of employment', two conditions must be fulfilled:

- Injury must have resulted from some risk incidental to the duties of the service, or inherent in the nature or condition of employment, and
- At the time of injury worker must have been engaged in the business of the employer and must not be doing something for his personal advantage or benefit.

Arising out of Employment

The expression "arising out of employment" suggests some causal connection between the employment and the accidental injury. The cause contemplated is the proximate cause and not any remote cause. Thus, where a workman suffers from heart disease and dies on account of strain of work by keeping continuously standing or working, held that the accident arose out of employment (Laxmibai Atma Ram Vs. Bombay Prot Trust, AIR 1954 Bom.180). Generally if a workman is suffering from a particular disease and as a result of wear and tear of his employment he dies of that disease, employer is not liable. But if the employment is contributory cause or has accelerated the death that the death was due to disease coupled with the employment, then the employer would be liable as arising out of the employment.

In the case of Mackenzine Vs. I.M. Issak, it was observed that the words "arising out of employment" means that injury has resulted from risk incidental to the duties of the service which unless engaged in the duly owing to the master, it is reasonable to believe that the workman would not otherwise have suffered. There must be a causal relationship between the accident and the employment.

Arising in the Course of Employment

It refers to the time during which employment continues. It covers the whole of the time a workman is carrying out the duties required of him as incidental to his contract of service. It includes not only the period when he is at

a place where he would not be but for his employment. [Works Manager, East India Rail v. Mahabir].

The word "employment" has a wider meaning than work. Man may be in course of his employment not only when is actually engaged in doing something in the discharge of his duty but also when he is engaged in acts belonging to and arising out of it (Union of India Vs. Mrs. Noorjahan, 1979 Lab. I.C.652).

When a means of transport is provided by the employer for the purpose of going to and from the place of work and workmen use that transport, the time during which that transport is used by the workmen is also included in the course of employment.

When a period of rest is granted to a workman, the course of employment includes the period of rest provided the workman remains in the employer's premises during the rest period.

When a workman reaches the place of employment well in time to equip himself for the work, he is in the course of employment.

On the other hand, where a boy employed in a boot-making business took home contrary to the orders of authorities a pair of boots for repairing them and thus to improve his own skill and while doing the repairs at home, he injured an eye with an awl, and it had to be removed, it was held that the injury did not arise out of and in the course of employment [Borley v. Ockenden]. The applicant who was a piecer in a cotton mill, went out of his work and interfered with tin rollers while in motion and his dhoti having been caught he put out his hand to pull it and got his hand crushed. It was held that he was not entitled to compensation [Gouri Kinkar Bhakat v. Radha Krishnan Cotton Mills].

To conclude, it may be stated that an accident arises out of and in the course of employment when a casual connection exists between the employment and the accident.

DEFENCES AVAILABLE TO EMPLOYERS

An employer is not liable to pay compensation for personal injury caused to a workman by accident arising out of and in the course of employment –

a) If the injury does not result in the total or partial disablement of the workman for a period exceeding 3 days;

b) If the injury, not resulting in death or permanent total disability, is caused by an accident which is directly attributable to –

- the workman having been at the time of the accident under the influence of drink or drugs; or
- the willful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen; or
- the willful removal or disregard by the workman of any safety guard or other device (which is an offence under the Factories Act, 1948) which he knew to have been provided for the purpose of securing the safety of the workmen.

If these defences were not available to the employer, a workman may be induced to cause to himself an injury by his own acts and to claim compensation from the employer (R.B. Moondra & Co., Vs. Mst. Bhanwari, AIR, 1970 Raj. 111).

Death of Workman

The exceptions, namely (i) intoxication by drink or drugs, (ii) willful disobedience of certain rules and orders, (iii) willful removal of safety devices, are not applicable in case of a fatal accident. The reason is that where a workman has died as a result of personal injury it is extremely difficult for the dependants to rebut evidence that the accident was caused by the deceased's misconduct.

COMPENSATION

"Compensation" has been defined under Sec.2(1)(c) of the Act to mean "compensation" as provided for by this Act. The meaning of the term will be more clear in the following paragraphs.

Amount of Compensation

The amount of compensation payable to a workman depends on –

- the nature of the injury caused by accident.
- the monthly wages of the workman concerned, and

◆ the relevant factor for working out lump-sum equivalent of compensation amount as specified in Schedule IV.

Calculation of Monthly Wages (Sec.5)

The amount payable to the injured employee is to be determined from the amount of his average monthly wages. What constitutes such wages is a question of fact that requires consideration to be given to numerous circumstances: such as absence from work, duration and continuity of employment, remuneration in addition to regular wages, and the existence of concurrent employments.

DISTRIBUTION OF COMPENSATION

Where an adult male worker has been totally or partially disabled by an injury the employer may either pay the compensation to the worker or deposit it with the Commissioner, who will then pay to the worker.

Compensation not to be Assigned

Sec.9 provides that no lump-sum or half-monthly payment payable as compensation shall in any way be capable of being assigned or charged or be liable to attachment or pass to any person other than the workman by operation of law, nor shall any claim be set off against the same.

REVIEW QUESTIONS :

1. Define the following terms as used in the Workmen's Compensation Act :

   (a) Partial disablement, (b) Total disablement, (c) Dependant.

2. Define and discuss arising out of and in the course of employment as used in the Workmen's Compensation Act.
3. How is the amount of Compensation payable to an injured workmen calculated under the Workmen's Compensation Act?
4. What defences are available to an employer against a claim for compensation made by a workman under the Workmen's Compensation Act?

* * *

INDUSTRIAL DISPUTES ACT, 1947

The Industrial Disputes Act was enacted in 1947. This Act makes provision for the investigation and settlement of industrial disputes and for certain other purposes. It ensures progress of industry by bringing about harmony and cordial relationship between the employers and employees.

The main objects of the Act are :

- To prevent and settle industrial disputes between the employers and workmen,
- To secure and preserve amity and good relations between the employers and workmen
- To promote good relations through an external machinery of conciliation, Courts of Inquiry, Labour Courts, Industrial Tribunals and National Tribunals.
- To prevent illegal strikes and lock-outs.
- To provide relief to workmen in the matter of lay-off and retrenchment.

DEFINITIONS

Industry [Sec.2(j)]

"Industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft, or industrial occupation or avocation of workmen.

Industrial Dispute [Sec.2(k)]

'Industrial dispute' means any dispute or difference between employers and employers, employers and workmen, or workmen and workmen, which is connected with (a) the employment or non-employment, or (b) the terms of employment, or (c) the conditions of labour of any person.

The definition of 'industrial dispute' in Sec.2(k) of the Industrial Disputes Act, 1947 has four ingredients, and if all four ingredients are satisfied, the dispute raised is an 'industrial dispute' which could validity be referred under Sec.10 to a Tribunal for adjudication. These four ingredients are –

a) there should be real and substantial dispute or difference;

b) the dispute or difference should be between

- employer and employer,
- employer and workmen, or
- workmen and workmen

c) the dispute or difference must be connected with the employment or non-employment or terms of employment, or with the conditions of labour of any person".

d) the dispute should relate to an industry as defined in Sec.2(j).

Award [Sec.2(b)]

It means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Tribunal. It also includes an arbitration award made under Sec.10-A.

Continuous Service [Sec.25-B]

A workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of –

- sickness, or
- authorised leave, or
- an accident, or
- a strike which is not illegal, or
- a lock-out or a cessation of work which is not due to any fault on the part of the workmen .

Closure [Sec.2(cc)]

It means the permanent closing down of a place of employment or part thereof.

Public Utility Service [Sec.2(n)]

It means –

(i) any railway service or any transport service for the carriage of passengers or goods by air;

(ii) any service in, or in connection with the working of, any major port or dock;

(iii) any section of an industrial establishment, on the working of which the safety of the establishment or the workmen employed therein depends;

(iv) any postal, telegraph, or telephone service;

(v) any industry which supplies power, light or water to the public;

(vi) any system of public conservancy or sanitation;

(vii) any industry specified in the First Schedule.

Strike [Sec.2(q)]

"Strike" means a cessation of work by a body of persons employed in any industry acting in combination; or a concerted refusal or a refusal under a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment.

The following points may be noted regarding the definition of strike :

(i) Strike can take place only when there is a cessation of work or refusal to work by the workmen acting in combination or in a concerted manner.

(ii) A concerted refusal or a refusal under a common understanding of any number of persons to continue to work or to accept employment will amount to a strike. A general strike is one when there is a concert of combination of workers stopping or refusing to resume work. Going on mass casual leave under a common understanding amounts to a strike.

If on the sudden death of a fellow-worker, the workmen acting in concert refuse to resume work, it amounts to a strike (National Textile Workers' Union Vs. Shree Meenakshi Mills (1951) II L.L.J. 516).

(iii) The striking workman, must be employed in an 'industry' which has not been closed down.

(iv) Even when workmen cease to work, the relationship of employer and employee is deemed to continue albeit in a state of belligerent suspension.

Types of Strike

(i) Stay-in, Sit-down, Pen-down or Tool-down Strike : In all such cases, the workmen after taking their seats, refuse to do work. All such acts on the part of the workmen acting in combination, amount to a strike.

(ii) Go-slow : Go-slow does not amount to strike, but it is a serious case of misconduct.

(iii) Sympathetic Strike : Cessation of work in the support of the demands of workmen belonging to other employer is called a sympathetic strike. The management can take disciplinary action for the absence of workmen. However, in Ramalingam Vs. Indian Metallurgical Corporation, Madras, 1964-I L.L.J.81, it was held that such cessation of work will not amount to a strike since there is no intention to use the strike against the management.

(iv) Hunger Strike : Some workers may resort to fast on or near the place of work or residence of the employer. If it is peaceful and does not result in cessation of work, it will not constitute a strike. But if due to such an act, even those present for work, could not be given work, it will amount to strike (Pepariach Sugar Mills Ltd. Vs. Their Workmen).

(v) Work-to-rule : Since there is no cessation of work, it does not constitute a strike.

Lay-off [Sec.2(kkk)]

'Lay-off' means the failure, refusal or inability of an employer to give employment to a workman (a) whose name is borne on the muster-rolls of his industrial establishment, and (b) who has not been retrenched. The failure, refusal, or inability to give employment may be due to –

(1) shortage of coal, power or raw materials, or

(2) the accumulation of stocks, or

(3) the breakdown of machinery, or

(4) natural calamity or for any other connected reasons.

Essentials of lay-off :

The essentials of a 'lay-off' are as follows:

a) There must be failure or refusal or inability of the employer to continue employees in his employment.

b) The employees laid off must be on the muster-rolls of the establishment on the day of lay-off.

c) The failure, refusal or inability to give employment may be due to shortage of raw materials or accumulation of stocks or breakdown of machinery or natural calamity or some other reason.

d) The employees must not have been retrenched.

Lock-out [Sec.2(i)]

It means the *temporary* closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him. The word 'temporary' was added to the definition by the Amendment Act of 1982.

Essentials of Lock-out :

The essentials of a lock-out are as follows:

a) There is a temporary closing of the place of employment, o suspension or withholding of the work by the employer in some form.

b) There is an element of demands for which the place of employment is locked-out or closed.

c) There is an intention to re-employ the workers if they accept the demands.

Retrenchment [Sec.2(oo)]

It means "to end, conclude, or cease". The term as used in the Industrial Disputes Act means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as punishment inflicted by way of disciplinary action.

'Retrenchment' however does not include:

- voluntary retirement of workman; or
- retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

- termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- termination of the service of a workman on the ground of continued ill-health.

Thus the definition contemplates following requirements for retrenchment:

(i) There should be termination of the service of the workman.

(ii) The termination should be by the employer.

(iii) The termination is not the result of punishment inflicted by way of disciplinary action.

(iv) The definition excludes termination of service on the specified grounds or instances mentioned in it.

Settlement [Sec.2(p)]

"Settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate government and the conciliation officer.

PROCEDURE FOR SETTLEMENT OF INDUSTRIAL DISPUTES

The Act provides an elaborate and effective machinery for bringing about industrial peace by setting up various authorities for the investigation and settlement of industrial disputes. These authorities can only promote settlement of industrial disputes or inquire into them but cannot make any awards which are binding on the parties. The various authorities are:

1. Works Committee (Sec.3)
2. Conciliation Officers (Sec.4)
3. Boards of Conciliation (Sec.5)
4. Courts of Inquiry (Sec.6)

5. Labour Courts (Sec.7)
6. Industrial Tribunals (Sec.7-A)
7. National Tribunals (Sec.7-B)

1. Works Committee (Sec.3)

In the case of any industrial establishment in which 100 or more workmen are employed or have been employed on any day in the preceding 12 months, the appropriate Government may, by general or special order, require the employer to constitute a Works Committee. The Committee shall consist of representatives of employers and workmen engaged in the establishment. The number of representatives of workmen on the Committee shall not be less than the number of representatives of the employers. The representatives of the workmen shall be chosen in the prescribed manner from among the workmen engaged in the establishment and in consultation with their trade union, if any, registered under the Trade Unions Act, 1926.

Powers and Duties

It shall be the duty of the Works Committee to –

(1) Promote measures for securing and preserving amity and good relations between the employers and workmen and, to that end.

(2) Comment upon matters of their common interest or concern, and

(3) Endeavour to compose any material difference of opinion in respect of such matters [Sec.3(2)]. These matters are so wide-ranging as to include welfare of workers, supervision of recreational facilities and crèches and hospitals, their training, wages, hours of work, bonus, gratuity, holidays with pay, and working conditions including discipline, promotions and transfers etc.

2. Conciliation Officers (Sec.4)

The appropriate Government may, by notification in the Official Gazette, appoint such number of persons as it thinks fit to be Conciliation Officers. The duty of the Conciliation Officers shall be to mediate in and promote the settlement of industrial disputes [Sec.4(1)].

A Conciliation Officer may be appointed for a specified area or for specified industries.

Duties:

(1) In case of disputes, the Conciliation Officer may hold conciliation proceedings.

(2) The Conciliation Officer has to investigate the dispute and all matters affecting the merits and the right settlement thereof.

(3) If a settlement of the dispute is arrived at in the course of the conciliation proceedings, the Conciliation Officer shall send a report along with a memorandum of settlement signed by the parties to the appropriate Government.

(4) If no such settlement is arrived at, the Conciliation Officer shall as soon as after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute for bringing about a settlement thereof.

Powers:

(1) A Conciliation Officer may for the purpose of inquiry into any existing or apprehended industrial dispute, after giving reasonable notice, enter the premises occupies by the establishment to which the dispute relates.

(2) A Conciliation Officer may call for and inspect any document which he has ground for considering to be relevant to the industrial dispute or to be necessary for the purpose of verifying the implementation of any award or carrying out any other duty imposed on him under the Act.

3. Boards of Conciliation (Sec.5)

The Board shall consist of a chairman and 2 or 4 other members, as the appropriate Government thinks fit. Where the parties to an industrial dispute apply in the prescribed manner for a reference of the dispute to a Board, the appropriate Government may at any time, by order in writing, refer the dispute to a Board of Conciliation for promoting a settlement thereof.

Duties:

(1) It shall be the duty of the Board to bring about a settlement of the dispute. It has to investigate the dispute and all matters affecting the merits and the right settlement thereof.

(2) To send a report and memorandum of settlement to the appropriate Government.

(3) To send a full report to the appropriate Government setting forth the steps taken by the Board in case no settlement is arrived at.

(4) The Board shall submit its report within 2 months of the date on which the dispute was referred to it or within such shorter period as may be fixed by the appropriate Government.

Powers:

(1) A member of the Board may, after giving reasonable notice, enter the premises occupied by any establishment to which the dispute relates.

(2) A Board shall have the same powers as are vested in a Civil Court namely:

- examining any person
- compelling the production of documents and material objects
- issuing summons for the examination of witnesses.

4. Courts of Inquiry (Sec.6)

The appropriate Government may constitute a Court of Inquiry basing on the application made by the parties to an industrial dispute, for inquiring into any matter appearing to be connected with or relevant to an industrial dispute.

Duties:

(1) A Court shall inquire into the matters referred to it and submit its report within a period of 6 months.

(2) A Court has to abide by the principle of fairplay and justice.

Powers:

A member of a Court has the power to enter into premises and it has the same powers as vested in a Civil Court.

5. Labour Courts (Sec.7)

The appropriate Government may constitute one or more Labour Courts for adjudication of industrial disputes relating to any matters specified in the

Second Schedule. These Courts shall also perform such other functions as may be assigned to them.

The Presiding Officer of a Labour Court must be a Judge of High Court; or District Judge for a period not less than 3 years; or held any judicial office in India for not less than 7 years; or has been the Presiding Officer of a Labour Court for not less than 5 years.

Duties:

(1) To adjudicate upon industrial disputes relating to matters specified in the Second Schedule.

(2) To give award within the period specified in the order.

Powers:

A member of a Court has the power to enter into premises and it has the same powers as vested in a Civil Court.

Where an industrial dispute has been referred to a Labour Court, the appropriate Government may by order prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.

6. Industrial Tribunals (Sec.7-A)

The appropriate Government may constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule and for performing such other functions as may be assigned to them under this Act.

The Presiding Officer of a Labour Court must be a Judge of High Court; or District Judge for a period not less than 3 years; or held any judicial office in India for not less than 7 years; or has been the Presiding Officer of a Labour Court for not less than 5 years.

Duties:

(1) To adjudicate upon industrial disputes relating to matters specified in the Second Schedule or Third Schedule.

(2) To give award within the period specified in the order.

Powers:

(1) A member of a Court has the power to enter into premises and it has the same powers as vested in a Civil Court.

(2) Power to appoint assessors to advise it in the proceedings.

(3) Power to award costs.

7. National Tribunal (Sec.7-B)

The Central Government may constitute one or more National Industrial Tribunals for the adjudication of industrial disputes which, in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such disputes.

A National Tribunal shall consist of one person only to be appointed by the Central Government. He must be a Judge of a High Court.

Where any reference has been made under Sec.10(1-A) to a National Tribunal, then notwithstanding anything contained in the Act, no Labour Court or Tribunal shall have jurisdiction to adjudicate upon any matter which is under adjudication before the National Tribunal.

Duties:

(1) Where an industrial dispute has been referred to a National Tribunal for adjudication, it shall hold its proceedings expeditiously. Further, it shall, within the period specified in the order referring such industrial dispute, submit its award to the appropriate Government.

(2) The award shall be in writing and shall be signed by the presiding officer of the National Tribunal. It shall, within a period of 30 days from the date of its receipt by the appropriate Government, be published in such manner as the appropriate Government thinks fit.

Powers:

(1) A member of a Court has the power to enter into premises and it has the same powers as vested in a Civil Court.

(2) Power to appoint assessors to advise it in the proceedings.

(3) Power to award costs.

AWARD AND SETTLEMENT

An award is an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Tribunal. It also includes an arbitration award made under Sec.10-A.

The report of a Board of Conciliation or Court of Inquiry shall be in writing and shall be signed by all the members of the Board or Court, as the case may be.

The award of a Labour Court or Industrial Tribunal or National Tribunal shall be in writing and shall be signed by its presiding officer. The award shall be published within a period of 30 days from the date of its receipt by the appropriate Government.

An award shall become enforceable on the expiry of 30 days from the date of its publication under Sec.17. The award may be rejected or modified within 90 days from the date of its publication.

Persons on Whom Settlements and Award are Binding (Sec.18)

(1) A settlement arrived at by agreement between the employer and workmen is binding on the parties to the agreement.

(2) An arbitration award is binding on the parties to the agreement.

(3) A settlement arrived at in the course of conciliation proceedings shall be binding on all parties to the dispute.

Period of Operation of Settlement and Awards (Sec.19)

A settlement arrived at in the course of conciliation proceedings shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.

An award shall remain in operation for a period of one year from the date on which the award becomes enforceable.

Any person who commits a breach of any term of any settlement or award, which is binding on him, shall be punishable with imprisonment for a term which may extend to 6 months, or with fine, or with both.

STRIKE AND LOCK-OUTS

Strike means –

(i) a cessation of work by a body of persons employed in any industry acting in combination; or

(ii) a concerted refusal of any number of persons who are or have been so employed to continue to work or to accept employment; or

(iii) refusal under a common understanding of any number of such persons to continue to work or to accept employment.

Lock-out means the *temporary* closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him. The word 'temporary' was added to the definition by the Amendment Act of 1982.

Prohibition of Strikes and Lock-outs (Secs.22 and 23)

1. *Strike in a public utility service.* No person employed in a public utility service shall go on strike in breach of contract –

   (a) without giving to the employer notice of strike, within 6 weeks before striking; or

   (b) within 14 days of giving such notice; or

   (c) before the expiry of the date of strike specified in any such notice as aforesaid; or

   (d) during the pendency of any conciliation proceedings before a Conciliation Officer and 7 days after the conclusion of such proceedings.

   A strike notice is valid only for 6 weeks.

   Clause (b) ensues that there is enough prior warning before the workmen actually go on strike.

2. *Lock-out in a public utility service.* No employer carrying on in a public utility service shall lock-out any of his workmen –

   (a) without giving to them notice of lock-out, within 6 weeks before locking-out; or

(b) within 14 days of giving such notice; or

(c) before the expiry of the date of lock-out specified in any such notice as aforesaid; or

(d) during the pendency of any conciliation proceedings before a Conciliation Officer and 7 days after the conclusion of such proceedings.

A lock-out notice is valid only for 6 weeks.

Clause (b) ensues that there is enough prior warning.

The notice of the lock-out shall be given in such manner as may be prescribed [Sec.22(5)].

Notice of Lock-out or Strike not necessary in certain cases:

The notice of lock-out or strike shall not be necessary where there is already in existence a strike, or as the case may be, lock-out in the public utility service. But the employer shall send intimation of such lock-out or strike on the day on which it is declared, to such authority as may be specified by the appropriate Government either generally or for a particular area or for a particular class of public utility services [Sec.22(3)].

Intimation of Notices of Strike or Lock-out to be given within 5 days:

If on any day an employer receives from any person employed by him any notices of strike or gives to any persons employed by him any notices of lock-out, he shall within 5 days thereof report to the appropriate Government or to such authority as that Government may prescribe the number of such notices received or given on that day [Sec.22(6)].

Illegal Strikes and Lock-outs (Sec.24)

A strike or a lock-out shall be illegal if –

- it is commenced or declared in contravention of Sec.22 or Sec.23; or
- it is continued in contravention of an order made under Sec.10 (3) or Sec.10-A(4-A).

Penalties for Illegal Strikes and Lock-outs

(1) *Penalty for illegal strikes [Sec.26(1)].* Any workman who commences, continues or otherwise acts in furtherance of a strike which is illegal, shall be punishable with imprisonment for a term which may extend to 1 month, or with fine which may extend to Rs.50, or with both.

(2) *Penalty for illegal lock-out [Sec.26(2)].* Any employer who commences, continues or otherwise acts in furtherance of a lock-out which is illegal, shall be punishable with imprisonment for a term which may extend to 1 month, or with fine which may extend to Rs.1,000 or with both.

(3) *Penalty for instigation, etc. [Sec.27].* Any person who instigates or incites others to take part in, or otherwise acts in furtherance of, a strike or lock-out which is illegal, shall be punishable with imprisonment for a term which may extend to 6 months, or with fine which may extend to Rs.1,000 or with both.

(4) *Penalty for giving financial aid for illegal strikes and lock-outs [Sec.28].* Any person who knowingly expends or applies any money in direct furtherance or support of any illegal strike or lock-out shall be punishable with an imprisonment for a term which may extend to 6 months, or with fine which may extend to Rs.1,000 or with both.

LAY-OFF

'Lay-off' means the failure, refusal or inability of an employer to give employment to a workman (a) whose name is borne on the muster-rolls of his industrial establishment, and (b) who has not been retrenched. The failure, refusal, or inability to give employment may be due to –

(1) shortage of coal, power or raw materials, or

(2) the accumulation of stocks, or

(3) the breakdown of machinery, or

(4) natural calamity or for any other connected reasons.

A lay-off shall be deemed to be illegal from the date on which the workmen had been laid-off –

(a) where no application for permission under Sec.25-M(1) is made, or

(b) where no application for permission under Sec.25-M(3) is made, within the period specified therein, or

(c) where the permission for any lay-off has been refused.

The workmen in the above cases shall be entitled to all the benefits under any law for the time being inforce as if they had not been laid-off.

The penalty for illegal lay-off is imprisonment upto 1 month or fine upto Rs.1,000 or both.

RETRENCHMENT

It means "to end, conclude, or cease". The term as used in the Industrial Disputes Act means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as punishment inflicted by way of disciplinary action.

Conditions precedent to Retrenchment of Workmen (Sec.25-F)

No workman employed in any industry who has been in continuous service for not less than 1 year under an employer shall be retrenched by that employer until –

(a) the workman has been given 1 month's notice in writing. The notice must indicate the reason for retrenchment. Further the workman cannot be retrenched until the period of notice has expired, or the workman has been paid in lieu of such notice wages for the period of the notice [Sec.25-F(a)]. This condition is mandatory and non-compliance with it will render retrenchment illegal.

(b) the workman has been paid, at the time of retrenchment, compensation which is equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of 6 months.

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

Procedure for Retrenchment (Sec.25-G)

The employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded, the

employer retrenches any other workman. Principle of 'last come, first go' applies to the rule of retrenchment.

Re-employment of Retrenched Workmen (Sec.25-H)

Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall give an opportunity to the retrenched workmen to offer themselves for re-employment. The retrenched workmen who offer themselves for re-employment shall have preference over other persons. The offer shall be made in such manner as may be prescribed.

TRANSFER AND CLOSING DOWN OF UNDERTAKINGS

Sometime the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employer. In such a case, every workman who has been in continuous service for not less than 1 year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of Sec.25-F, as if the workman had been retrenched.

Compensation to workman in case of closing down of undertakings (Sec.25-FFF)

Where an undertaking is closed for any reason, whatsoever, every workman who has been in continuous service for not less than 1 year in that undertaking immediately before such closure shall be entitled to notice and compensation as if the workman had been retrenched.

Review Questions:

1. Define (a) Strike, (b) Lock-out, (c) Lay-off, (d) Retrenchment (e) Industrial Dispute, (f) Continuous Service.
2. What authorities have been set up under the Industrial Disputes Act for the settlement of Industrial Disputes?
3. When does the strike or lock-out becomes illegal?
4. Define Award and Settlement. When and under what circumstances does an award made commence to be enforceable?
5. Write a note on the provisions of the Act relating to Lay-off and Retrenchment.

* * *

TRADE UNION ACT, 1926

The law relating to the registration of trade unions and certain other matters is contained in the Trade Unions Act, 1926. The Act came into force on 1st June, 1927. The object of the Act is to regulate conditions governing the registration of trade unions; obligations imposed upon a registered trade union and rights and liabilities of registered trade unions.

DEFINITIONS

Trade union [Sec.2(h)]

It means any combination, whether temporary or permanent, formed primarily for the purpose of

- ❖ Regulating the relations
  - between workmen and employers, or
  - between workmen and workmen, or
  - between employers and employers, or
- ❖ for imposing restrictive conditions on the conduct of any trade of business, and
- ❖ it includes any federation of two or more trade unions.

Registered Trade Union [Sec.2(e)]

It means a trade union registered under the Act.

Trade Dispute [Sec.2(g)]

It means any dispute between –

- employers and workmen, of
- workmen and workmen, or
- employers and employers, which is connected with

(i) the employment or non-employment, or

(ii) the terms of employment, or

(iii) the conditions of labour, of any person.

'Workmen' means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises.

REGISTRATION OF TRADE UNIONS

Mode of Registration (Sec.4)

Any seven or more members of a trade union may apply for registration by subscribing their names to the rules of the trade union and by otherwise complying with other requirements in relation to registration under the Act [Sec.4(1)].

Application for Registration

Every application for registration of a trade union shall be made to the Registrar along with the fee as prescribed under Regulation 8 (Rupees five at present) and shall be accompanied by a copy of the rules of the Trade Union and a statement of the following particulars:

- the names, addresses and occupations of the members making the application;
- the name of the trade union and the address of its head office; and
- the titles, names, ages, addresses and occupations of the officers of the trade union (Sec.5)

Where a trade union has been in existence for more than one year before the making of an application for its registration in Form A, a general statement of its assets and liabilities prepared in the prescribed form has also to be delivered to the Registrar, together with the application.

Rules of Trade Union (Sec.6)

A trade union is entitled to registration only if its executive is constituted in accordance with the provisions of the Act and its rules provide for the following matters, namely:

(a) the name of the trade union;

(b) the whole of its objects;

(c) the whole of the purposes for which the general funds of the trade union shall be applicable under Sec.15;

(d) the maintenance of a list of the members of the trade union and adequate facilities for the inspection thereof by the office-bearers and members of the trade union;

(e) the admission of ordinary members who shall be persons actually engaged or employed in the industry with which the trade union is connected, and also the admission of the number of honorary or temporary office-bearers to form the executive of the trade union;

(f) the payment of a subscription by the members of the trade union which shall be as prescribed by the Act;

(g) the conditions under which any members shall be entitled to any benefit assured by the rules and conditions under which fines may be imposed on the members;

(h) the manner in which the rules shall be amended, varied or rescinded;

(i) the manner in which the members of the executive and other office-bearers of the trade union shall be appointed and removed;

(j) the safe custody of the funds of the trade union, and annual audit of the accounts thereof, and facilities for the inspection of the account books by the office-bearers and members of the trade union; and

(k) the manner in which the trade union may be dissolved.

Registration (Sec.8)

The Registrar, on being satisfied that the trade union has complied with all the requirements of this Act in regard to registration, shall register the trade union. He shall register the trade union by entering in a register, to be maintained in such form as may be prescribed, the particulars relating to the trade union contained in the statement accompanying the application.

Certificate of Registration (Sec.9)

The Registrar, on registering a trade union under Sec.8, shall issue a Certificate of Registration in the Form 'C', which shall be conclusive evidence that the trade union has been duly registered under the Act.

Cancellation of Registration (Sec.10)

According to Sec.10, the Registrar may withdraw or cancel the Certificate of Registration on the following grounds:

(a) Certificate has been obtained by fraud or mistake.

(b) Trade Union has ceased to exist.

(c) Trade Union has willfully and after notice from the Registrar contravened any provision of the Act.

(d) Trade Union has allowed any rule to continue in force which is inconsistent with any provision of the Act.

(e) Trade Union has rescinded any rule providing for any matters, provision for which is required by Section 6.

(f) Trade Union has on its own, applied for its withdrawal or cancellation.

Provided that before the Certificate is withdrawn or cancelled, the Registrar shall give at least two months notice in writing, specifying the grounds on which it is proposed to take action. In absence of previous notice any proceeding for cancellation or withdrawal of registration is illegal (Radheyshyam Singh Vs Bata Majdoor Union, 1977 Lab IC 1488). However, no notice is required when application has been made by Trade Union itself.

Further, the Registrar should satisfy himself that the withdrawal or cancellation of registration has been approved by the general meeting of the Trade Union or has the approval of the majority of the members. For this he may call or examine any person or particulars (Sec.6).

Membership of Trade Union

Any person can become a member of a Trade Union. Ordinarily the members of a Trade Union must be persons who are actually engaged in the trade or industry with which the union is concerned. But there is nothing in the Act which debars a Trade Union from admitting outsiders as its members. A person does not have the absolute right to be admitted as a member of the Trade Union. He may, however, claim this right if there is an express provision in the constitution of the Union that no one having the requisite qualification can be refused membership.

Qualification for becoming Members of Trade Union

Any person who has attained the age of 15 years may be a member of a registered trade union. But he cannot be an office-bearer until he attains the age of 18 years. It is only persons engaged in trade or business (which includes an industry) who can form a trade union or become members of a trade union.

RIGHTS AND PRIVILEGES OF A TRADE UNOIN

1. Body Corporate (Sec.13)

Every registered trade union is a body corporate by the name under which it is registered and has perpetual succession and a common seal with power to acquire and hold both movable and immovable property and to contract and can by the said name sue and be sued.

2. Separate Fund for Political Purposes (Sec.16)

A registered trade union may constitute a separate fund, from contributions separately levied for or made to that fund, from which payments may be made for the promotion of the civic and political interests of its members.

3. Immunity from Criminal Proceedings (Sec.17)

An office-bearer or member of a registered trade union shall not be liable to punishment under Sec.120-B(2) of the Indian Penal Code, 1860 in respect of any agreement made between the members for the purpose of furthering any such object of the trade union on which general funds may be spent.

4. Immunity from Civil Suits (Sec.18)

A suit or other legal proceeding shall not be maintainable in any Civil Court against any trade union or any office-bearer or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the trade union is a party. [Sec.18(1)]

Thus, Section 18 protects the Trade Union and its office-bearers or members in respect of certain specified tortuous act committed in contemplation or furtherance of a trade dispute.

FUNDS OF A REGISTERED TRADE UNION

The Act provides for two types of Funds, viz., (i) General Funds and (ii) Funds for political purpose.

General Funds

According to Section 15, the general funds of a registered trade union shall be spent only for the following purposes :

1. The payment of salaries, allowances and expenses to office-bearers of the trade union.
2. The payment of expenses for the administration of the trade union, including audit of the accounts of the general funds of the trade union.
3. The expenses in prosecution or defence of any legal proceeding to which the trade union or any member thereof is a party, undertaken for the purpose of securing or protecting any rights of the trade union.
4. The conduct of trade disputes on behalf of the trade union or any members thereof.
5. The compensation of members for loss arising out of trade disputes.
6. Allowances to members or their dependants on account of death, old age, sickness, accidents or unemployment of such members.
7. The issue of, or the undertaking of liability under, policies of assurance on the lives of members, or under policies insuring members against sickness, accident or unemployment.
8. The provision of educational, social or religious benefits for members (including the payment of the expenses of funeral or religious ceremonies for deceased members) or for the dependants of members;
9. The upkeep of a periodicals published mainly for the purpose of discussing questions affecting employees or workmen as such.
10. The payment of contributions to any cause intended to benefit workmen in general. The expenditure in respect of such contributions in any financial year shall not at any time during that year be in excess of 1/4th of the combined total of the gross income which has up to that time accrued to the

general funds of the trade union during that year and of the balance at the credit of those funds at the commencement of that year.

11. Subject to any conditions contained in the notification, any other object notified by the appropriate Government in the Office Gazette.

If the union funds are spent on any objects other than those enumerated in Sec.15, the expenditure will be unlawful and ultra vires the Act. The union can be restrained by injunction from applying its funds for any such object.

Political Fund of a Registered Trade Union (Sec.16)

A registered trade union may constitute a separate fund from which payments may be made for the promotion of the civic and political interests of its members [Sec.16(1)]. Such fund can be used in furtherance of the following objects, viz.,

(a) The payment of any expenses incurred either directly or indirectly by a candidate or prospective candidate for election as a member of any legislative body constituted under the Constitution or of any local authority; or

(b) The holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate, or

(c) The maintenance of any person who is a member of any legislative body constituted under the Constitution or for any local authority; or

(d) The registration of electors or the election of a candidate for any legislative body constituted under the Constitution or of any local authority; or

(e) The holding of political meetings of any kind, or the distribution of political literature or political documents of any kind.

DISSOLUTION OF TRADE UNION

When the trade union is dissolved, notice of the dissolution signed by 7 members and by the Secretary of the trade union shall be sent to the Registrar within 14 days of the dissolution. If the Registrar is satisfied that the dissolution has been effected in accordance with the rules of the trade union, he shall register the fact of dissolution. The dissolution shall take effect from the date of such registration [Sec.27(1)].

On dissolution, where the rules do not provide for distribution of the funds of the Trade Union, the Registrar shall distribute the fund amongst members in such manner as may be prescribed. Under the Trade Union Regulations, the Registrar shall divide the funds in proportion to the amounts contributed by the members by way of subscription during their membership (Regulation 11).

Review Questions:

1. Define the following terms as used in the Trade Unions Act, 1926:

   (a) Trade Union (b) Trade Dispute

2. Briefly explain how trade unions are registered?
3. What are the privileges of a registered trade union?
4. What are the objects on which the general funds of a trade union may be spent?
5. When and for what purposes may a trade union create a political fund?

* * *

CONSUMER PROTECTION ACT, 1986

Consumerism as a movement had its roots in the United States of America. The main exponent of this movement was Ralph Nader, who tried to bring the light the major problems that the consumer faces and how they are exploited by the manufacturers, dealers, traders or retailers. The International Organisation of Consumer Unions was established in 1960 at Hague, but it was J.F.Kennedy who after delivering his message to the U.S. Congress made this movement much stronger in 1962. The importance of this movement rose steadily since then and in the year 1983, it was decided that 15th March would be observed as the 'World Consumer Day' and it has been held as such in all the following years. In India, during the 19th century, the consumer as a group needs protection from the hands of sellers, who are using various means and tactics to exploit and extract money from these vulnerable class of people.

Consumer Protection Act (COPRA), 1986 is one of the dynamic and radical piece of socio-economic legislation enacted by the Parliament of India since Independence. This Act with 35 sections and 4 chapters is enacted for the promotion and protection of the Consumers – Right to safety, Right to information, Right to choose, Right to be heard, Right of redressal and Right to consumer education. Consumer Protection Councils at Central and State level are constituted to safeguard consumer rights. The Act was amended in 1993.

HOSPITALS AND COPRA

The dogma whether the medical profession, totally should be covered under this Act is still undecided. The Act clearly states that a consumer can bring up a dispute in the form of a complaint before these Redressal Agencies. The Act further defines that a consumer is a person who buys or hires any goods or services for a consideration in terms of money makes use of the services of a doctor becomes a consumer.

The National Consumer Disputes Redressal Commission, recently upheld that the medical profession can be taken to the Consumer's court in the event of any deficiency in the performance of service. The ruling was delivered by a four member panel of the commission, headed by Justice V.Balakrishna Eradi, hearing the review petition of the Cosmopolitan Hospitals Limited, Thiruvananthapuram and one of its senior consultant in Orthopaedics Dr. K. Venugopalan Nair. A similar senior opinion has been taken by the Andhra Pradesh High Court, which in April 1992, ruled that services rendered by doctors are maintainable under the COPRA, Justice M.N. Rao and Justice N.Neeladri Rao constituting a division bench of the High Court gave the ruling while dismissing a batch of writ prohibition petitions filed by various medical practitioners (private) and the Indian Medical Association.

On the other hand, the judgements given by the Madras and Gujarat State Commissions established that patients are not consumers and hence the COPRA is not applicable to the medical profession. However the judgement of the Rajasthan State Commission has contributed to some confusion as on one side it acknowledges that the patients are not consumers and on the other hand, states that those undergoing treatment in Government hospitals where the service is provided free of cost, the COPRA cannot be evoke.

The medical fraternity is presently having a sigh of relief in the wake of the mid-February (1994) Judgement of a Division Bench of Madras High Court, holding that the services to a patient by a doctor or hospital by way of diagnosis and treatment cannot be constructed as 'Service' as defined in Sec.2(1) (0) of the COPRA Act. The court also held that a patient is not a consumer within the meaning of the Act and judgement goes not totally exonerate the doctors, since paramedical staff on whom the doctors depend upon continue to come under the COPRA.

The verdict of the Supreme Court in 1995 is now crystal clear when it has held that Hospital and Medical Profession are covered under COPRA. The general public has lauded the Supreme Court order on doctors. Even as doctors rush to get insurance cover and give to their apprehensions in public forum, there is overwhelming public support for the Supreme Court verdict bringing the medical profession within the ambit of the Consumer Protection Act and making doctors liable for acts of the negligence and incompetence. Ninety percent of the people polled in the six major metros of Delhi, Bombay, Calcutta, Madras, Bangalore and Hyderabad have welcomed the Supreme Court judgement. As many as 80 percent believe that since doctors today are money minded rather than service-oriented, they should be prepared to pay compensation for negligence just like any other commercial enterprise. There is little support for the doctor's argument that consumer forums are not competent to assess highly technical medical issues. Sixty-one percent believe that the Medical Council of India, the professional body for registering doctors and investigating cases of negligence or incompetence, has not shown any interest in disciplining errant doctors, Consumer forums would provide the necessary recourse, feel 68 percent of the respondents.

The public is fully aware of the Supreme Court verdict and show implicit faith in the judgement, equally significant is the large area of consensus in the responses to the six questions asked. To the doctor's fears voiced recently that the public work be encouraged to file frivolous cases and subject doctors to blackmail, 60 per cent say this is unlikely. Significantly, 55 per cent do not think there would be an increase in overall soon. They seem to believe that there is enough room for doctors and clinics to absorb any increase in cost.

Consumer Dispute Redressal System

For the redressal of the grievances of consumers of goods and services, Consumer Disputes Redressal Agencies at District, State and National Level have been constituted. These District Forums, State Commission and National Commission, hierarchy of Consumer Disputes Redressal Agencies at appropriate level are quasi judicial in nature, observe the principles of natural justice, and award.reliefs of specific in nature and Compensation in appropriate cases. They are also empowered to impose penalties for non-compliance, as shown in figure below:

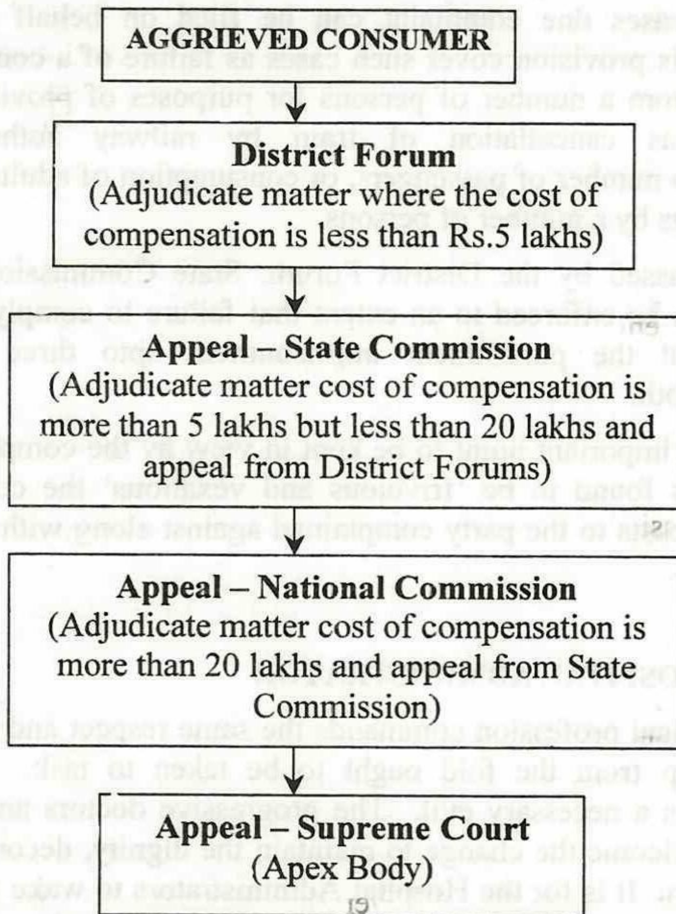


Fig: Consumer Dispute a Redressal System

Unlike traditional civil courts, the main objective of Consumer Protection Act is to provide speedy, simple and inexpensive justice to consumers. As per

the Rules of COPRA, Consumer disputes are to be disposed within 90 days and in some cases where the goods require laboratory analysis, those cases are to be disposed within 150 days. The procedure followed in Consumer Forums is very simple. No court fee is to be paid. Any complaint may be filed by an individual consumer, any recognized consumers association or one or more consumer, when there are numerous consumers having the same interest at the Central or the State Government can file a complaint.

The Act also now provide for institution of complaints for classification, i.e. where more than one person or group of people are seeking similar kind of relief in such cases one complaint can be filed on behalf of a group or organisation. This provision cover such cases as failure of a company to refund deposits taken from a number of persons for purposes of providing product or service, such as cancellation of train by railway authorities causing inconvenience to number of passengers, or consumption of adulterated food or a substandard drugs by a number of persons.

Orders passed by the District Forum, State Commission and National Commission can be enforced to an extent that failure to comply with the order can bring about the punishment imprisonment upto three years of fine Rs.10,000/- or both.

One very important point to be kept in view by the complainant is that if the complaint is found to be 'frivolous and vexatious' the complaint can be directed to pay costs to the party complained against along with penalty amount upto Rs.10,000/-.

COPRA AND HOSPITAL ADMINISTRATOR

Still medical profession commands the same respect and nobility. One or two black sheep from the fold ought to be taken to task. The Consumer Protection Act is a necessary evil. The progressive doctors and right thinking doctors must welcome the change to maintain the dignity, decorum and nobility of the profession. It is for the Hospital Administrators to wake up the imminent throats posed by the COPRA and to initiate following actions in the hospitals that will take the medical profession back to the glory and esteem it deserve:

A - Medical Audit

B - Basic Knowledge and Skills

C - Good Documentation

D - Good Care

E - Educate the patients about ill or side effects of therapeutic interventions

F - Follow up Clinics

G - Good Communication

Besides these, continuing medical education programme for all doctors and paramedical staff should be organised regularly. Only with the active cooperation of the doctors and the enlightened section of the society, the goals of consumer protection act will be achieved.

Review Questions:

1. Bring out the need for Consumer Protection.
2. What are the consumer rights?
3. State the application of Consumer Protection Act in hospitals.
4. State the procedure of getting the grievances redressed by the consumers.

* * *

MODEL QUESTION PAPER
HOSPITAL RELATED LAWS

Time: 3 Hours — Max. Marks: 100

SECTION - A (5 x 8 = 40)

Answer any **Five** questions

All questions carry equal marks

1. Bring out the importance of Central Birth and Death Registration Act 1969.
2. State the conditions under which the pregnancy can be terminated.
3. What are the matters to be provided for in the Standing Orders?
4. What are the rules as to payment and recovery of contributions by an employer?
5. What are the circumstances in which gratuity becomes payable to an employee under the Payment of Gratuity Act?
6. What are the maternity benefits available to women workers under the Maternity Benefit Act, 1961?
7. State the provisions of the Factories Act, 1948 regarding (a) weekly holidays, and (b) annual leave with wages.
8. What are the privileges of a registered trade union?

SECTION - B (4 x 15 = 60)

Answer any **Four** questions

9. Explain the advantages and nutritional superiority of breast milk.
10. What are the different types of benefits provided by the E.S.I. Act?
11. How is 'available surplus' determined under the Payment of Bonus Act? What part of it can be distributed amongst the employees as bonus?
12. State the provisions of the Factories Act 1948 with regard to health, safety and welfare of the workers.
13. What authorities have been set up under the Industrial Disputes Act for the settlement of Industrial Disputes?
14. Define and discuss arising out of and in the course of employment as used in the Workmen's Compensation Act.
15. State the application of Consumer Protection Act in hospitals.